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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

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

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

FEDERAL RESERVE SYSTEM

12 CFR Part 201

[Regulation A]

Extensions of Credit by Federal Reserve Banks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) has adopted final amendments to its Regulation A to reflect the Board's approval of a decrease in the primary credit rate at each Federal Reserve Bank. The secondary credit rate at each Reserve Bank automatically decreased by formula as a result of the Board's primary credit rate action.

DATES: The amendments to part 201 (Regulation A) are effective November 6, 2008. The rate changes for primary and secondary credit were effective on the dates specified in 12 CFR 201.51, as amended.

FOR FURTHER INFORMATION CONTACT: Jennifer J. Johnson, Secretary of the Board (202/452–3259); for users of Telecommunication Devices for the Deaf (TDD) only, contact 202/263–4869.

SUPPLEMENTARY INFORMATION: The Federal Reserve Banks make primary and secondary credit available to depository institutions as a backup source of funding on a short-term basis, usually overnight. The primary and secondary credit rates are the interest rates that the twelve Federal Reserve Banks charge for extensions of credit under these programs. In accordance with the Federal Reserve Act, the primary and secondary credit rates are established by the boards of directors of the Federal Reserve Banks, subject to the review and determination of the Board.

The Board approved requests by the Reserve Banks to decrease by 50 basis points the primary credit rate in effect at each of the twelve Federal Reserve Banks, thereby decreasing from 1.75 percent to 1.25 percent the rate that each Reserve Bank charges for extensions of primary credit. As a result of the Board's action on the primary credit rate, the rate that each Reserve Bank charges for extensions of secondary credit automatically decreased from 2.25 percent to 1.75 percent under the secondary credit rate formula. The final amendments to Regulation A reflect these rate changes.

The 50-basis-point decrease in the primary credit rate was associated with a similar decrease in the target for the federal funds rate (from 1.50 percent to 1.00 percent) approved by the Federal Open Market Committee (Committee) and announced at the same time. A press release announcing these actions indicated that:

> The pace of economic activity appears to have slowed markedly, owing importantly to a decline in consumer expenditures. Business equipment spending and industrial production have weakened in recent months, and slowing economic activity in many foreign economies is damping the prospects for U.S. exports. Moreover, the intensification of financial market turmoil is likely to exert additional restraint on spending, partly by further reducing the ability of households and businesses to obtain credit. In light of the declines in the prices of energy and other commodities and the weaker prospects for economic activity, the Committee expects inflation to moderate in coming quarters to levels consistent with price stability.
>
> Recent policy actions, including today's rate reduction, coordinated interest rate cuts by central banks, extraordinary liquidity measures, and official steps to strengthen financial systems, should help over time to improve credit conditions and promote a return to moderate economic growth. Nevertheless, downside risks to growth remain. The Committee will monitor economic and financial developments carefully and will act as needed to promote sustainable economic growth and price stability.
>
> The Committee will monitor economic and financial developments carefully and will act as needed to promote sustainable economic growth and price stability.

Regulatory Flexibility Act Certification

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Board certifies that the new primary and secondary credit rates will not have a significantly adverse economic impact on a substantial number of small entities because the final rule does not impose any additional requirements on entities affected by the regulation.

Administrative Procedure Act

The Board did not follow the provisions of 5 U.S.C. 553(b) relating to notice and public participation in connection with the adoption of these amendments because the Board for good cause determined that delaying implementation of the new primary and secondary credit rates in order to allow notice and public comment would be unnecessary and contrary to the public interest in fostering price stability and sustainable economic growth. For these same reasons, the Board also has not provided 30 days prior notice of the effective date of the rule under section 553(d).

12 CFR Chapter II

List of Subjects in 12 CFR Part 201

Banks, Banking, Federal Reserve System, Reporting and recordkeeping.

Authority and Issuance

■ For the reasons set forth in the preamble, the Board is amending 12 CFR Chapter II to read as follows:

PART 201—EXTENSIONS OF CREDIT BY FEDERAL RESERVE BANKS (REGULATION A)

■ 1. The authority citation for part 201 continues to read as follows:

Authority: 12 U.S.C. 248(i)–(j), 343 *et seq.*, 347a, 347b, 347c, 348 *et seq.*, 357, 374, 374a, and 461.

■ 2. In § 201.51, paragraphs (a) and (b) are revised to read as follows:

§ 201.51 Interest rates applicable to credit extended by a Federal Reserve Bank.[1]

(a) *Primary credit.* The interest rates for primary credit provided to depository institutions under § 201.4(a) are:

Federal Reserve Bank	Rate	Effective
Boston	1.25	October 29, 2008.
New York	1.25	October 29, 2008.

[1] The primary, secondary, and seasonal credit rates described in this section apply to both advances and discounts made under the primary, secondary, and seasonal credit programs, respectively.

Federal Reserve Bank	Rate	Effective
Philadelphia	1.25	October 30, 2008.
Cleveland	1.25	October 29, 2008.
Richmond	1.25	October 30, 2008.
Atlanta	1.25	October 31, 2008.
Chicago	1.25	October 29, 2008.
St. Louis	1.25	October 30, 2008.
Minneapolis	1.25	October 30, 2008.
Kansas City	1.25	October 29, 2008.
Dallas	1.25	October 30, 2008.
San Francisco ..	1.25	October 29, 2008.

(b) *Secondary credit.* The interest rates for secondary credit provided to depository institutions under 201.4(b) are:

Federal Reserve Bank	Rate	Effective
Boston	1.75	October 29, 2008.
New York	1.75	October 29, 2008.
Philadelphia	1.75	October 30, 2008.
Cleveland	1.75	October 29, 2008.
Richmond	1.75	October 30, 2008.
Atlanta	1.75	October 31, 2008.
Chicago	1.75	October 29, 2008.
St. Louis	1.75	October 30, 2008.
Minneapolis	1.75	October 30, 2008.
Kansas City	1.75	October 29, 2008.
Dallas	1.75	October 30, 2008.
San Francisco ..	1.75	October 29, 2008.

* * * * *

By order of the Board of Governors of the Federal Reserve System, November 3, 2008.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E8–26483 Filed 11–5–08; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 23, 25, 33, and 35

[Docket No.: FAA–2007–27310; Amendment Nos. 23–59, 25–126, 33–28, and 35–5]

RIN 2120–AI95

Airworthiness Standards; Propellers; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; corrections.

SUMMARY: This document corrects the amendment number and a typographical error in the final rule published in the **Federal Register** on Friday, October 24, 2008. The final rule amends the airworthiness standards for issuance of original and amended type certificates for airplane propellers.

DATES: This amendment becomes effective December 23, 2008.

FOR FURTHER INFORMATION CONTACT: Jay Turnberg, Engine and Propeller Directorate Standards Staff, ANE–110, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803–5299; telephone (781) 238–7116; facsimile (781) 238–7199, *e-mail: jay.turnberg@faa.gov.*

Correction

In the final rule, Airworthiness Standards; Propellers, published in the **Federal Register** issue of Friday, October 24, 2008, (73 FR 63339) make the following corrections:

1. On page 63339, in the second column, the fifth line of the heading, ''Amendment No. 35–5'' is corrected to read, ''Amendment No. 35–8.''

2. On page 63340, in the third column, revise the heading ''Harmonization with S–P Amendment 1'' to read ''Harmonization with CS–P Amendment 1''.

Issued in Washington, DC, on October 31, 2008.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

[FR Doc. E8–26392 Filed 11–5–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 29

[Docket No. SW022; Special Conditions No. 29–022–SC]

Special Conditions: Eurocopter France (ECF) Model EC225LP Helicopter, Installation of a Search and Rescue (SAR) Automatic Flight Control System (AFCS)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the ECF Model EC225LP helicopter. This helicopter will have novel or unusual design features associated with installing an optional SAR AFCS. The applicable airworthiness standards do not contain adequate or appropriate safety requirements for this design feature. These special conditions contain the additional safety standards the Administrator considers necessary to show a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is October 30, 2008. We must receive your comments by December 22, 2008.

ADDRESSES: You must mail or deliver two copies of your comments to: Federal Aviation Administration, Rotorcraft Directorate, Attn: Rules Docket (ASW–111), Docket No. SW022, 2601 Meacham Blvd., Fort Worth, Texas 76137. You must mark your comments: Docket No. SW022. You may inspect comments in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Jeff Trang, FAA, Rotorcraft Directorate, ASW–111, Aircraft Certification Service, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5135; facsimile (817) 222–5961.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the design approval and thus delivery of the affected aircraft. The FAA therefore finds that good cause exists for making these special conditions effective on issuance.

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel about these special conditions. You can inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this document between 8:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive by the closing date for comments. We will consider comments filed late if it is possible to do so without incurring additional expense or delay. We may change these special conditions based on the comments we receive.

If you want us to let you know we received your comments on these special conditions, send us a preaddressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background and Discussion

On March 27, 2006, ECF applied for a change to Type Certificate (TC) No. H4EU to install an optional SAR AFCS in the Model EC225LP helicopter. The Model EC225LP is a transport category helicopter certified to Category A requirements when configured for more than nine passengers and Category A or B requirements when configured for nine or less passengers. This helicopter is also certified for instrument flight under the requirements of Appendix B of 14 CFR part 29, Amendment 29–47.

The use of dedicated AFCS upper modes, in which a fully coupled autopilot provides operational SAR profiles, is needed for SAR operations conducted over water in offshore areas clear of obstructions. The SAR modes enable the helicopter to fly fully coupled maneuvers, to include predefined search patterns during cruise flight, and to transition from cruise flight to a stabilized hover and departure (transition from hover to cruise flight). The SAR AFCS also includes an auxiliary crew control that allows another crewmember (such as a hoist operator) to have limited authority to control the helicopter's longitudinal and lateral position during hover operations.

Flight operations conducted over water at night may have an extremely limited visual horizon with little visual reference to the surface even when conducted under Visual Meteorological Conditions (VMC). Consequently, the certification requirements for SAR modes are considered equivalent to operating under Instrument Meteorological Conditions (IMC). While Appendix B to 14 CFR part 29 prescribes airworthiness criteria for instrument flight, it does not consider operations below instrument flight minimum speed (V_{MINI}), whereas the SAR modes allow for coupled operations at low speed, all-azimuth flight to zero airspeed (hover).

Since SAR operations have traditionally been a public use mission, the use of SAR modes in civil operations requires special airworthiness standards (special conditions) to ensure that a level of safety consistent with Category A and Instrument Flight Rule (IFR) certification is maintained. In this regard, 14 CFR part 29 lacks adequate airworthiness standards for AFCS SAR mode certification to include flight characteristics, performance, and installed equipment and systems.

Type Certification Basis

Under 14 CFR 21.101, ECF must show the EC225LP, as changed, continues to meet the applicable provisions of the rules incorporated by reference in TC No. H4EU or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the TC are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in H4EU are as follows:

a. 14 CFR 21.29.

b. 14 CFR part 29 Amendments 29–1 to 29–25; plus § 29.785 through Amendment 29–28; plus §§ 29.963, 29.967, 29.973, 29.975 through Amendment 29–34; plus §§ 29.25, 29.865 through Amendment 29–42; plus §§ 29.1, 29.2, 29.49, 29.51, 29.53, 29.55, 29.59, 29.60, 29.61, 29.62, 29.64, 29.65, 29.67, 29.73, 29.75, 29.77, 29.79, 29.81, 29.83, 29.85, 29.87, 29.307, 29.337, 29.351, 29.361, 29.391, 29.395, 29.397, 29.401, 29.403, 29.413, 29.427, 29.501, 29.519, 29.547, 29.549, 29.561(c), 29.561(d), 29.563, 29.602, 29.610, 29.613, 29.621, 29.625, 29.629, 29.631, 29.663, 29.674, 29.727, 29.755, 29.775, 29.783, 29.787, 29.803, 29.805, 29.807, 29.809, 29.811, 29.855, 29.861, 29.901, 29.903, 29.908, 29.917, 29.923, 29.927, 29.954, 29.961, 29.965, 29.969, 29.971, 29.991, 29.997, 29.999, 29.1001, 29.1011, 29.1019, 29.1027, 29.1041, 29.1043, 29.1045, 29.1047, 29.1093, 29.1125, 29.1141, 29.1143, 29.1163, 29.1181, 29.1189, 29.1193, 29.1305, 29.1309, 29.1323, 29.1329, 29.1337, 29.1351, 29.1359, 29.1415, 29.1521, 29.1549, 29.1557, 29.1587, A29, B29, C29, D29 through Amendment 29–47; plus 29.1317 through Amendment 29–49.

c. 14 CFR part 36 Amendment 21 (ICAO Annex 16, Volume 1, Chapter 8).

d. Equivalent Safety Findings:

(1) TC2899RD–R–F–01; § 29.1303(j), V_{ne} aural warning.

(2) TC2899RD–R–F–02; § 29.1545(b)(4), Airspeed indicators markings.

(3) TC2899RD–R–F–03; § 29.1549(b), Powerplant instruments markings.

(4) TC2899RD–R–F–05; § 29.173, 175, Static Longitudinal Stability.

(5) TC2899RD–R–F–06; 14 CFR part 29, Appendix B, paragraph IV; IFR Static Longitudinal Stability—Airspeed stability.

(6) TC2899RD–R–A–01; § 29.807(d)(2), Ditching emergency exits for passengers.

(7) TC2899RD–R–P–01; § 29.923(a)(2), Rotor drive system and control mechanism tests.

In addition to the applicable airworthiness standards and special conditions, the ECF Model EC225LP must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Regulatory Basis for Special Conditions

If the Administrator finds the applicable airworthiness standards (*i.e.*, 14 CFR part 29) do not contain adequate or appropriate safety requirements for the ECF Model EC225LP helicopter because of a novel or unusual design feature, special conditions are prescribed under 14 CFR 21.16.

The FAA issues special conditions, as defined in § 11.19, under § 11.38, and they become part of the type certification basis under § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should the TC for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same TC be modified to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model.

Novel or Unusual Design Features

The ECF Model EC225LP helicopter will incorporate the following novel or unusual design features:

The SAR system is composed of a navigation computer with SAR modes, an AFCS that provides coupled SAR functions, hoist operator control, a hover speed reference system, and two radio altimeters. The AFCS coupled SAR functions include:

a. Hover hold at selected height above the surface.

b. Ground speed hold.

c. Transition down and hover to a waypoint under guidance from the navigation computer.

d. SAR pattern, transition down, and hover near a target over which the helicopter has flown.

e. Transition up, climb, and capture a cruise height.

f. Capture and track SAR search patterns generated by the navigation computer.

g. Monitor the preselected hover height with automatic increase in collective if the aircraft height drops below the safety height.

These SAR modes are intended to be used over large bodies of water in areas clear of obstructions. Further, use of the modes that transition down from cruise to hover will include operation at airspeeds below V_{MINI}.

The SAR system only entails navigation, flight control, and coupled AFCS operation of the helicopter. The

system does not include the additional equipment that may be required for over water flight or external loads to meet other operational requirements.

Applicability

These special conditions apply to the ECF Model EC225LP helicopters. Should ECF apply at a later date for a change to the TC to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101(d).

Conclusion

This action affects only certain novel or unusual design features on one model of helicopter. It is not a rule of general applicability.

Normally, in adopting special conditions, we provide notice and an opportunity for comment before issuing the final special conditions. However, because the delivery date of the ECF Model EC225LP helicopter is imminent, we find that it is impracticable to provide prior notice because a delay would be contrary to the public interest. Therefore, good cause exists to make these special conditions effective upon issuance.

List of Subjects in 14 CFR Part 29

Aircraft, Aviation safety.

■ The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Eurocopter France EC225LP model helicopters when the optional Search and Rescue (SAR) Automatic Flight Control System (AFCS) is installed:

In addition to the part 29 certification requirements for Category A and helicopter instrument flight (Appendix B), the following additional requirements must be met for certification of the SAR AFCS:

(a) *SAR Flight Modes.* The coupled SAR flight modes must provide:

(1) Safe and controlled flight in three axes (lateral and longitudinal position/speed and height/vertical speed) at all airspeeds from instrument flight minimum speed (V_{MINI}) to a hover.

(2) Automatic transition to the helicopter instrument flight (Appendix B) envelope.

(3) A Go-Around mode that safely disengages any other coupled mode in case of an aborted approach to a hover or SAR system failure.

(4) A means to prevent unintended flight below a safe minimum height.

(b) *SAR Mode System Architecture.* To support the integrity of the SAR modes, the following system architecture is required:

(1) A system for limiting the engine power demanded by the AFCS when any of the automatic piloting modes are engaged, so FADEC power limitations, such as torque and temperature, are not exceeded.

(2) A system providing the aircraft height above the surface and final pilot-selected height at a location on the instrument panel in a position acceptable to the FAA that will make it plainly visible to and usable by any pilot at his station.

(3) A system providing the pilot-selected heading at a location on the instrument panel in a position acceptable to the FAA that will make it plainly visible to and usable by any pilot at his station.

(4) A system providing to any pilot the pilot-selected longitudinal and lateral ground speeds used by the AFCS in the flight envelope where airspeed indications become unreliable.

(5) A system providing wind speed and wind direction when automatic piloting modes are engaged or transitioning from one mode to another.

(6) A system that monitors for flight guidance deviations and failures, coupled with an appropriate and unmistakable alerting function for the flight crew, unless it is shown that a deviation or failure does not create a hazard.

(7) An alerting system that provides unmistakable visual or aural alerts, or both, to the flight crew under any of the following conditions:

(i) When the stored or pilot-selected minimum safety height is reached.

(ii) When a SAR mode system malfunction occurs.

For normal transitions from one SAR mode to another, a single visual or aural alert may suffice. For a SAR mode malfunction or a mode having a time-critical component, the crew alerting system must activate early enough to allow the crew to take timely and appropriate action. The alerting means must be designed to alert the crew in order to minimize crew errors that could create an additional hazard.

(8) The SAR system hoist operator control is considered a flight control and must comply with the following:

(i) The hoist operator control must be designed and located to provide for convenient operation and to prevent confusion and inadvertent operation.

(ii) The helicopter must be safely controllable by the hoist operator control throughout the range of that control.

(iii) The hoist operator control may not interfere with the safe operation of the helicopter. Pilot and copilot flight controls must be able to smoothly override the control authority of the hoist operator control, without exceptional piloting skill, alertness, or strength, and without the danger of exceeding any other limitation because of the override.

(9) The reliability of the AFCS must be related to the effects of its failure. The occurrence of any failure condition that would prevent continued safe flight and landing must be extremely improbable. For any failure condition of the AFCS which is not shown to be extremely improbable:

(i) The helicopter must be safely controllable and capable of continued safe flight without exceptional piloting skill, alertness, or strength. Additional unrelated probable failures affecting the control system must be evaluated.

(ii) The AFCS must be designed so that it cannot create a hazardous deviation in the flight path or produce hazardous loads on the helicopter during normal operation or in the event of a malfunction or failure, assuming corrective action begins within an appropriate period of time. Where multiple systems are installed, subsequent malfunction conditions must be evaluated in sequence unless their occurrence is shown to be improbable.

(10) A functional hazard assessment (FHA) and a system safety assessment must be prepared and consider the catastrophic failure conditions associated with SAR operations. For SAR catastrophic failure conditions, changes may be required to the following:

(i) System architecture.

(ii) Software and complex electronic hardware design assurance levels.

(iii) HIRF test levels.

(iv) Instructions for continued airworthiness.

The assessments must consider all the systems required for SAR operations to include the AFCS, all associated AFCS sensors (*e.g.,* radio altimeter), and primary flight displays. Electrical and electronic systems with SAR catastrophic failure conditions (*e.g.,* AFCS) must comply with the § 29.1317(a)(4) High Intensity Radiated Field (HIRF) requirements.

(c) *SAR Mode Performance Requirements.* (1) The SAR modes must be demonstrated in the requested flight

envelope for the following minimum sea-state and wind conditions:

(i) Sea State: Wave height of 2.5 meters (8.2 feet), considering both short and long swells.

(ii) Wind: 25 knots headwind; 17 knots for all other azimuths.

(2) The selected hover height and hover velocity must be captured (to include the transition from one captured mode to another captured mode) accurately and smoothly and not exhibit any significant overshoot or oscillation.

(3) For any single failure or any combination of failures of the AFCS that is not shown to be extremely improbable, the Minimum Use Height (MUH) must result in a loss of height that is no greater than half of the MUH with a minimum margin of 15 feet above the surface.

(4) The SAR mode system must be usable up to the maximum certified gross weight of the aircraft or to the lower of the following weights:

(i) Maximum emergency flotation weight.

(ii) Maximum hover Out-of-Ground Effect (OGE) weight.

(iii) Maximum demonstrated weight.

(d) *Flight Characteristics.* (1) The basic aircraft must meet all the part 29 airworthiness criteria for helicopter instrument flight (Appendix B).

(2) For SAR mode coupled flight below V_{MINI}, at the maximum demonstrated winds, the helicopter must be able to maintain any required flight condition and make a smooth transition from any flight condition to any other flight condition without requiring exceptional piloting skill, alertness, or strength, and without danger of exceeding the limit load factor. This requirement also includes aircraft control through the hoist operator's control.

(3) For SAR modes at airspeeds below V_{MINI}, the following requirements of Appendix B to part 29 must be met and will be used as an extension to the IFR certification envelope of the basic aircraft:

(i) Static Longitudinal Stability: The requirements of paragraph IV of Appendix B are not applicable.

(ii) Static Lateral-Directional Stability: The requirements of paragraph V of Appendix B are not applicable.

(iii) Dynamic Stability: The requirements of paragraph VI of Appendix B are replaced with the following two paragraphs:

(A) Any oscillation must be damped, and any aperiodic response must not double in amplitude in less than 10 seconds. This requirement must also be met with degraded upper mode(s) of the AFCS. An ''upper mode'' is a mode that utilizes a fully coupled autopilot to provide an operational SAR profile.

(B) After any speed deviation of 5 knots, the return to the initial automatic hold condition must occur without oscillation within 10 seconds or less.

(4) With any of the upper mode(s) of the AFCS engaged, the pilot must be able to manually recover the aircraft and transition to the normal (Appendix B) IFR flight profile envelope without exceptional skill, alertness, or strength.

(e) *One-Engine Inoperative (OEI) Performance Information.* (1) The following performance information must be provided in the Rotorcraft Flight Manual Supplement (RFMS):

(i) OEI performance information and emergency procedures, providing the maximum weight that will provide a minimum clearance of 15 feet above the surface, following failure of the critical engine in a hover. The maximum weight must be presented as a function of the hover height for the temperature and pressure altitude range requested for certification. The effects of wind must be reflected in the hover performance information.

(ii) Hover OGE performance with the critical engine inoperative for OEI continuous and time-limited power ratings for those weights, altitudes, and temperatures for which certification is requested.

These OEI performance requirements do not replace performance requirements that may be needed to comply with the airworthiness or operational standards (§ 29.865 or 14 CFR part 133) for external loads or human external cargo.

(f) *RFMS.* (1) The RFMS must contain, at a minimum:

(i) Limitations necessary for safe operation of the SAR system to include:

(A) Minimum crew requirements.

(B) Maximum SAR weight.

(C) Engagement criteria for each of the SAR modes to include MUH.

(ii) Normal and emergency procedures for operation of the SAR system (to include operation of the hoist operator control), with AFCS failure modes, AFCS degraded modes, and engine failures.

(iii) Performance information:

(A) OEI performance and height-loss.

(B) Hover OGE performance information, utilizing OEI continuous and time-limited power ratings.

(C) The maximum wind envelope demonstrated in flight test.

(g) *Flight Demonstration.* (1) Before approval of the SAR system, an acceptable flight demonstration of all the coupled SAR modes is required.

(2) The AFCS must provide fail-safe operations during coupled maneuvers. The demonstration of fail-safe operations must include a pilot workload assessment associated with manually flying the aircraft to an altitude greater than 200 feet above the surface and an airspeed of at least the best rate of climb airspeed (V_y).

(3) For any failure condition of the SAR system not shown to be extremely improbable, the pilot must be able to make a smooth transition from one flight mode to another without exceptional piloting skill, alertness, or strength.

(4) A failure condition that is not shown to be extremely improbable must be demonstrated by analysis, ground testing, or flight testing. For failures demonstrated in flight, the following normal pilot recognition and recovery times are acceptable (normal pilot recognition time is the time that it takes an average pilot to recognize that a failure has occurred):

(i) Transition (Cruise-to-Hover/Hover-to-Cruise) and Hover: Normal pilot recognition plus 1 second.

(ii) Cruise: Normal pilot recognition plus 3 seconds.

(5) All AFCS malfunctions must include evaluation at the low-speed and high-power flight conditions typical of SAR operations. Additionally, AFCS hard-over, slow-over, and oscillatory malfunctions, particularly in yaw, require evaluation. AFCS malfunction testing must include a single or a combination of failures (*e.g.*, erroneous data from and loss of the radio altimeter, attitude, heading, and altitude sensors) which are not shown to be extremely improbable.

(6) The flight demonstration must include the following environmental conditions:

(i) Swell into wind.

(ii) Swell and wind from different directions.

(iii) Cross swell.

(iv) Swell of different lengths (short and long swell).

Issued in Fort Worth, Texas, on October 30, 2008.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. E8–26462 Filed 11–5–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0989; Directorate Identifier 2008–CE–029–AD; Amendment 39–15727; AD 2008–23–06]

RIN 2120–AA64

Airworthiness Directives; DG Flugzeugbau GmbH Models DG–1000S and DG–1000T Gliders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) issued by the aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

1. The bolt of a bearing stand which is the pivot for a bell crank failed in a DG–500 ELAN Trainer. As the cause of the failure it is suspected that the nut fixing the bell crank had become loose. As the design is similar in the DG–1000 up to ser. no. 10–109 analogous instructions have to be executed for the DG–1000.

2. During aerobatics a suspension of the airbrake control hook up in the wing root failed. Therefore the suspension shall be reinforced.

This AD requires actions that are intended to address the unsafe condition described in the MCAI.

DATES: This AD becomes effective November 26, 2008.

On November 26, 2008, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

We must receive comments on this AD by December 8, 2008.

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

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Greg Davison, Glider Program Manager, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; fax: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued AD No.: 2007–0316R1–E, dated March 13, 2008, corrected March 14, 2008 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

1. The bolt of a bearing stand which is the pivot for a bell crank failed in a DG–500 ELAN Trainer. As the cause of the failure it is suspected that the nut fixing the bell crank had become loose. As the design is similar in the DG–1000 up to ser. no. 10–109 analogous instructions have to be executed for the DG–1000.

2. During aerobatics a suspension of the airbrake control hook up in the wing root failed. Therefore the suspension shall be reinforced.

The MCAI requires you to check the torque of the nut, which fixes bellcrank 5St19 to the bolt, and replace the bolt if the torque is too low; install an additional bracket; check the suspension of the airbrake control hook ups in the wing roots for any damage; reinforce the suspensions of the airbrake control hookups in the wing roots; and repair any damage found. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

DG Flugzeugbau GmbH has issued the following:

- Technical Note No. 1000/12, corrected January 7, 2008;
- Working instruction No. 1 for TN1000/12, dated November 30, 2007;
- Working instruction No. 2 for TN1000/12, dated November 30, 2007;
- Working instruction No. 3 for TN1000/12, corrected January 28, 2008;
- Working instruction No. 4 for TN1000/12, dated November 29, 2007;
- Working instruction No. 5 for TM1000/12, dated December 5, 2007;
- Section 4.4.2 of Maintenance Manual for the Glider DG–1000S, Issued: March 2002; and
- Section 4.4.2 of the Maintenance Manual for the Motorglider DG–1000T, Issued: June 2005.

The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all information provided by the State of Design Authority and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might have also required different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are described in a separate paragraph of the AD. These requirements take precedence over those copied from the MCAI.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because this condition, if not corrected, may cause excessive bending loads, leading to premature failure of the bolt and loss of control. Due to overstress during aerobatics, a mounting of the airbrake control hookup in the wing root may fail. This condition, if not corrected, may lead to failure of the

airbrake control system. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0989; Directorate Identifier 2008–CE–029–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2008–23–06 DG Flugzeugbau GmbH: Amendment 39–15727; Docket No. FAA–2008–0989; Directorate Identifier 2008–CE–029–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective November 26, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Models DG–1000S and DG–1000T gliders with the following serial numbers (SN), certificated in any category:

(1) *Group 1:* SN 10–1 through 10–102 and 10–106 through 10–108.

(2) *Group 2:* SN 10–1 through 10–83, 10–85 through 10–87, 10–89 through 10–91, 10–93, and 10–94.

Subject

(d) Air Transport Association of America (ATA) Code 27: Flight Controls.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

''1. The bolt of a bearing stand which is the pivot for a bell crank failed in a DG–500 ELAN Trainer. As the cause of the failure it is suspected that the nut fixing the bell crank had become loose. As the design is similar in the DG–1000 up to ser. no. 10–109 analogous instructions have to be executed for the DG–1000.''

''2. During aerobatics a suspension of the airbrake control hook up in the wing root failed. Therefore the suspension shall be reinforced.''

The MCAI requires you to check the torque of the nut, which fixes bellcrank 5St19 to the bolt, and replace the bolt if the torque is too low; install an additional bracket, check the suspension of the airbrake control hook ups in the wing roots for any damage; reinforce the suspensions of the airbrake control hook ups in the wing roots; and repair any damage found.

Actions and Compliance

(f) Unless already done, do the following actions in accordance with DG Flugzeugbau GmbH Technical Note No. 1000/12, corrected January 7, 2008; DG Flugzeugbau GmbH Working instruction No. 1 for TN1000/12, dated November 30, 2007; DG Flugzeugbau GmbH Working instruction No. 2 for TN1000/12, dated November 30, 2007; DG Flugzeugbau GmbH Working instruction No. 3 for TN1000/12, corrected January 28, 2008; DG Flugzeugbau GmbH Working instruction No. 4 for TN1000/12, dated November 29, 2007; DG Flugzeugbau GmbH Working instruction No. 5 for TM1000/12, dated December 5, 2007; Section 4.4.2 of Maintenance Manual for the Glider DG–1000S, Issued: March 2002; and Section 4.4.2 of the Maintenance Manual for the Motorglider DG–1000T, Issued: June 2005, except for the addition of the placard requirement stated in paragraph (f)(2)(i) of this AD:

(1) For Group 1 Gliders:

(i) Before further flight as of November 26, 2008 (the effective date of this AD), inspect the torque of the nut which fixes bellcrank 5St19 to the bolt following Working instruction No. 1. If the measured torque is 3 Nm (2.2 ft-lb.) or higher, increase the torque to 12 Nm (9 ft-lb.).

(ii) If, as a result of the torque inspection required by paragraph (f)(1)(i) of this AD, you find the torque was less than 3 Nm (2.2 ft-lb.), before further flight, replace the bolt according to Working instruction No. 2. In such a case, within 7 days after the torque inspection, send a note by e-mail to *design@dg-Flugzeugbau.de* informing DG Flugzeugbau of the bolt replacement.

(iii) Within the next 90 days after November 26, 2008 (the effective date of this AD), install an additional bracket following Working instruction No. 3.

(2) For Group 2 Gliders:

(i) Before further flight as of November 26, 2008 (the effective date of this AD), install a placard in the pilot's clear view which states: ''Aerobatic maneuvers are prohibited.'' This placard must be removed and aerobatics reinstated once the airbrake control hook-up mountings have been reinforced or replaced following Working instruction No. 4 or 5.

(ii) Before further flight as of November 26, 2008 (the effective date of this AD), visually inspect the mountings of the airbrake control hook ups in the wing roots for any damage and inspect the overcenter locking moment following Technical Note No. 1000/12.

(iii) If, as a result of the inspections of the mountings of the airbrake control hook ups and the overcenter locking moment required by paragraph (f)(2)(ii) of this AD, you find any damage (visual cracks and/or moment force measures below 50 N (11 lbs.)), repair the damage following Working instruction No. 5. If damage is detected on only one wing, repair only the damaged wing. You must reinforce the undamaged wing as instructed in paragraph (f)(2)(iv) of this AD.

(iv) If you do not find any damage (no cracks or the measured overcenter locking movement is within the specified tolerance) as a result of the inspections of the mountings of the airbrake control hook ups and the overcenter locking moment required by paragraph (f)(2)(ii) of this AD, within the next 90 days after November 26, 2008 (the effective date of this AD), reinforce the mountings of the airbrake control hook ups in the wing roots following Working instruction No. 4.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows:

(1) This AD requires the installation of a placard for Group 2 gliders that states aerobatic maneuvers are prohibited, which is to be removed when the airbrake control hook-up mountings have been reinforced or replaced. The MCAI does not require installation of a placard.

(2) DG Flugzeugbau GmbH Technical Note No. 1000/12, corrected January 7, 2008, states that instructions 1 and 4 may be executed by the owner. By FAA regulations, this AD requires all affected gliders to have the required actions done by an appropriately-rated mechanic.

(3) The MCAI refers to the term ''suspension;'' the technical note instead uses the term ''mounting.'' This AD uses the term ''mounting'' for consistency with the technical note.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Greg Davison, Glider Program Manager, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; fax: (816) 329–4090. Before using any approved AMOC on any glider to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI European Aviation Safety Agency (EASA) AD No.: 2007–0316R1–E, dated March 13, 2008, corrected March 14, 2008; DG Flugzeugbau GmbH Technical Note No. 1000/12, corrected January 7, 2008; DG Flugzeugbau GmbH Working instruction No. 1 for TN1000/12, dated November 30, 2007; DG Flugzeugbau GmbH Working instruction No. 2 for TN1000/12, dated November 30, 2007; DG Flugzeugbau GmbH Working instruction No. 3 for TN1000/12, corrected January 28, 2008; DG Flugzeugbau GmbH Working instruction No. 4 for TN1000/12, dated November 29, 2007; DG Flugzeugbau GmbH Working instruction No. 5 for TM1000/12, dated December 5, 2007; Section 4.4.2 of Maintenance Manual for the Glider DG–1000S, Issued: March 2002; and Section 4.4.2 of the Maintenance Manual for the Motorglider DG–1000T, Issued: June 2005, for related information.

Material Incorporated by Reference

(i) You must use the service information specified in Table 1 of this AD to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact DG Flugzeugbau GmbH, Otto-Lilienthal-Weg 2, 76646 Bruchsal, Federal Republic of Germany; telephone: +49 (0) 7251 3020140; Fax: +49 (0) 7251 3020149; E-Mail: *dirks@dg-flugzeugbau.de.*

(3) You may review copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

TABLE 1—MATERIAL INCORPORATED BY REFERENCE

Service Bulletin No.	Page	Date
(i) DG Flugzeugbau GmbH Technical Note No. 1000/12	1 through 2	Corrected January 7, 2008.
(ii) DG Flugzeugbau GmbH Working instruction No. 1 for TN1000/12	1 of 1	November 30, 2007.
(iii) DG Flugzeugbau GmbH Working instruction No. 2 for TN1000/12	1 of 1	November 30, 2007.
(iv) DG Flugzeugbau GmbH Working instruction No. 3 for TN1000/12	1 through 2	Corrected January 28, 2008.
(v) DG Flugzeugbau GmbH Working instruction No. 4 for TN1000/12	1 through 6	November 29, 2007.
(vi) DG Flugzeugbau GmbH Working instruction No. 5 for TM1000/12	1 through 3	December 5, 2007.
(vii) Section 4.4.2 of Maintenance Manual for the Glider DG–1000S	Cover 4.4, 4.5	Issued: March 2002. Issued: March 2002. Issued: March 2002.
(viii) Section 4.4.2 of the Maintenance Manual for the Motorglider DG–1000T	Cover 4.4, 4.5	Issued: June 2005. Issued: December 2005. Issued: December 2005.

Issued in Kansas City, Missouri, on October 28, 2008.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–26236 Filed 11–5–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0830; Directorate Identifier 2007–NM–285–AD; Amendment 39–15711; AD 2008–22–15]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Falcon 2000EX Airplanes

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

ACTION: Final rule.

SUMMARY: We are superseding an existing airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

Investigations after a CAS (crew alerting system) message ''ENG 1 FIRE DETECT FAIL'' that occurred on an in-service aircraft revealed that the detector threshold tolerances could not permit to identify the failure of one single engine fire detector loop out of the two present on each engine. The fire detection system integrity is therefore not correctly monitored.

* * * * *

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective December 11, 2008.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of December 11, 2008.

The Director of the Federal Register approved the incorporation by reference of Dassault Service Bulletin F2000EX–137, Revision 1, dated December 7, 2006, listed in this AD as of February 2, 2007 (72 FR 2177, January 18, 2007).

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on August 4, 2008 (73 FR 45176) and proposed to supersede AD 2007–02–01, Amendment 39–14888 (72 FR 2177, January 18, 2007). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

Investigations after a CAS (crew alerting system) message ''ENG 1 FIRE DETECT FAIL'' that occurred on an in-service aircraft revealed that the detector threshold tolerances could not permit to identify the failure of one single engine fire detector loop out of the two present on each engine. The fire detection system integrity is therefore not correctly monitored.

Airworthiness Directive (AD) No 2006–0356–E [which corresponds to FAA AD 2007–02–01] was initially issued to mandate the verification of the fire detection system integrity by a one time inspection.

The current AD mandates installation of two new fire monitoring units of an improved design, each one of them is capable of monitoring the integrity of both detectors on the associated engine.

You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

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

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

We estimate that this AD will affect about 42 products of U.S. registry. We also estimate that it will take about 3 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Required parts will cost about $0 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $10,080, or $240 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–14888 (72 FR 2177, January 18, 2007) and adding the following new AD:

2008–22–15 Dassault Aviation: Amendment 39–15711. Docket No. FAA–2008–0830; Directorate Identifier 2007–NM–285–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective December 11, 2008.

Affected ADs

(b) This AD supersedes AD 2007–02–01, Amendment 39–14888.

Applicability

(c) This AD applies to Dassault Model Falcon 2000EX airplanes, certificated in any category, serial number (S/N) 06 and from S/N 28 to 107 inclusive, without modification M2958 implemented.

Subject

(d) Air Transport Association (ATA) of America Code 26: Fire Protection.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

''Investigations after a CAS (crew alerting system) message ''ENG 1 FIRE DETECT FAIL'' that occurred on an in-service aircraft revealed that the detector threshold tolerances could not permit to identify the failure of one single engine fire detector loop out of the two present on each engine. The fire detection system integrity is therefore not correctly monitored.

''Airworthiness Directive (AD) No 2006–0356–E [which corresponds to FAA AD 2007–02–01] was initially issued to mandate the verification of the fire detection system integrity by a one time inspection.

''The current AD mandates installation of two new fire monitoring units of an improved design, each one of them is capable of monitoring the integrity of both detectors on the associated engine.''

Restatement of Requirements of AD 2007–02–01

(f) Unless already done, do the following actions. Within 35 days after February 2, 2007 (the effective date of AD 2007–02–01), perform an engine fire detection integrity check as required by paragraphs (f)(1), (f)(2), and (f)(3) of this AD in accordance with Dassault Service Bulletin F2000EX–137, Revision 1, dated December 7, 2006. Doing the replacement required by paragraph (g) of this AD terminates the requirements of this paragraph.

(1) First, in the baggage compartment, on each mobile connector of the monitoring units (L320WG) and (R320WG), the equivalent resistance of the two engine detectors at the LH (left-hand) and the RH (right-hand) sides must be verified. According to findings, the corresponding system is either considered correct or incorrect.

(2) As a second step, if either one or both the LH and the RH system is (are) found to be incorrect, it is required to check the actual resistance of both detectors of the incorrect system(s) on the affected engine(s).

(3) Any faulty detector must be replaced prior to further flight.

(4) Actions done before February 2, 2007, in accordance with Dassault Service Bulletin F2000EX–137, dated November 23, 2006, are acceptable for compliance with the requirements of paragraph (f) of this AD.

New Requirements of This AD: Actions and Compliance

(g) Unless already done, within the next 12 months after the effective date of this AD, remove the two fire monitoring units having part number (P/N) 6342–01 and replace them with new ones having P/N 6342–02 in accordance with the Accomplishment Instructions of Dassault Mandatory Service Bulletin F2000EX–138, dated March 5, 2007. Doing the replacement terminates the requirements of paragraph (f) of this AD.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(h) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(i) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2007–0119, dated May 2, 2007; Dassault Service Bulletin F2000EX–137, Revision 1, dated December 7, 2006; and Dassault Mandatory Service Bulletin F2000EX–138, dated March 5, 2007; for related information.

Material Incorporated by Reference

(j) You must use Dassault Service Bulletin F2000EX–137, Revision 1, dated December 7, 2006; and Dassault Mandatory Service Bulletin F2000EX–138, dated March 5, 2007; to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of Dassault Mandatory Service Bulletin F2000EX–138, dated March 5, 2007, under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The Director of the Federal Register previously approved the incorporation by reference of Dassault Service Bulletin F2000EX–137, Revision 1, dated December 7, 2006, on February 2, 2007 (72 FR 2177, January 18, 2007).

(3) For service information identified in this AD, contact Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606; telephone 201–440–6700; Internet *http://www.dassaultfalcon.com.*

(4) You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on October 9, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–25754 Filed 11–5–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0990 Directorate Identifier 2008–CE–060–AD; Amendment 39–15724; AD 2008–23–03]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Model PC–6 Series Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

This Airworthiness Directive (AD) is prompted by a potential problem with the freedom of the brake pedals of some PC–6 series aircraft.

The freedom of the brake pedals could be prevented because of an insufficient clearance between the rudder bar lugs on a few aircraft. In such conditions, it is possible that the master brake cylinder is not re-filled with the fluid from the reservoir, which can lead to a degradation of brake effectiveness. Mostly during landing, this can lead to difficulties with the directional control of the aircraft on ground and could cause a runway excursion.

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective December 11, 2008.

On December 11, 2008, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on September 17, 2008 (73 FR 53764). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

This Airworthiness Directive (AD) is prompted by a potential problem with the freedom of the brake pedals of some PC–6 series aircraft.

The freedom of the brake pedals could be prevented because of an insufficient clearance between the rudder bar lugs on a few aircraft. In such conditions, it is possible that the master brake cylinder is not re-filled with the fluid from the reservoir, which can lead to a degradation of brake effectiveness. Mostly during landing, this can lead to difficulties with the directional control of the aircraft on ground and could cause a runway excursion.

For the reason stated above, the present Airworthiness Directive mandates a check of the brake pedals for full and free movement and, if any damage is found, the modification of the brake pedals to restore their freedom.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

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

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

Based on the service information, we estimate that this AD will affect 50 products of U.S. registry. We also estimate that it will take about 2 work-hours per product to comply with basic requirements of this AD. The average labor rate is $80 per work-hour.

Based on these figures, we estimate the cost of this AD to the U.S. operators to be $8,000 or $160 per product.

In addition, we estimate that any necessary follow-on actions would take about 10 work-hours and require parts costing $100, for a cost of $900 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD Docket.

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2008–23–03 Pilatus Aircraft Ltd: Amendment 39–15724; Docket No. FAA–2008–0990; Directorate Identifier 2008–CE–060–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective December 11, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Models PC–6, PC–6–H1, PC–6–H2, PC–6/350, PC–6/350–H1, PC–6/350–H2, PC–6/A, PC–6/A–H1, PC–6/A–H2, PC–6/B–H2, PC–6/B1–H2, PC–6/B2–H2, PC–6/B2–H4, PC–6/C–H2, and PC–6/C1–H2 airplanes, manufacturer serial numbers (MSN) 101 through 950 and MSN 2001 through 2092, certificated in any category.

Note 1: These airplanes may also be identified as Fairchild Republic Company PC–6 airplanes, Fairchild Industries PC–6 airplanes, Fairchild Heli Porter PC–6 airplanes, or Fairchild-Hiller Corporation PC–6 airplanes.

Subject

(d) Air Transport Association of America (ATA) Code 32: Landing Gear.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

''This Airworthiness Directive (AD) is prompted by a potential problem with the freedom of the brake pedals of some PC–6 series aircraft.

''The freedom of the brake pedals could be prevented because of an insufficient clearance between the rudder bar lugs on a few aircraft. In such conditions, it is possible that the master brake cylinder is not re-filled with the fluid from the reservoir, which can lead to a degradation of brake effectiveness. Mostly during landing, this can lead to difficulties with the directional control of the aircraft on ground and could cause a runway excursion.

''For the reason stated above, the present Airworthiness Directive mandates a check of the brake pedals for full and free movement and, if any damage is found, the modification of the brake pedals to restore their freedom.''

Actions and Compliance

(f) Unless already done, do the following actions:

(1) Inspect the brake pedals for full and free movement within the next 100 hours time-in-service after December 11, 2008 (the effective date of this AD) or within the next 12 months after December 11, 2008 (the effective date of this AD), whichever occurs first, following the accomplishment instructions of Pilatus Aircraft Ltd. Pilatus PC–6 Service Bulletin No. 32–002, Revision 2, dated April 29, 2008.

(2) If as a result the inspection required by paragraph (f)(1) of this AD any stiffness or limited movement of a brake pedal is found, before further flight, perform the corrective actions in accordance with the paragraph 3.C. of the accomplishment instructions of Pilatus Aircraft Ltd. Pilatus PC–6 Service Bulletin No. 32–002, Revision 2, dated April 29, 2008.

(3) As of December 11, 2008 (the effective date of this AD), do not install any pilot or co-pilot rudder pedal assembly Part Number (P/N) 6232.0011.00, P/N 6232.0255.52, P/N 116.35.06.050, P/N 116.35.06.053, or P/N 116.35.06.054 unless it has been inspected and modified as applicable in accordance with paragraphs (f)(1) and (f)(2) of this AD.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et.seq.), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI European Aviation Safety Agency AD No.: 2008–0171, dated September 9, 2008, for related information.

Material Incorporated by Reference

(i) You must use Pilatus Aircraft Ltd. Pilatus PC–6 Service Bulletin No. 32–002, Revision 2, dated April 29, 2008, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact PILATUS AIRCRAFT LTD., P.O. Box 992, 6371 Stans, Switzerland; phone: +41 41 619 65 80; fax: +41 41 619 65 76; Internet: *http://www.pilatus-aircraft.com;* e-mail: *fodermatt@pilatus-aircraft.com.*

(3) You may review copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Kansas City, Missouri, on October 28, 2008.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–26117 Filed 11–5–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–1161; Directorate Identifier 2008–CE–067–AD; Amendment 39–15726; AD 2008–23–05]

RIN 2120–AA64

Airworthiness Directives; Stemme GmbH & Co. KG Models S10 and S10–V Gliders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) issued by the aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

Investigations performed following a report about a fuel leakage in a Stemme S10–V powered-sailplane revealed that some fuel lines fabricated between March 2008 and May 2008, after the introduction of a new pressing tool, present a manufacturing defect which could lead to the puncture of the fuel lines.

This AD requires actions that are intended to address the unsafe condition described in the MCAI.

DATES: This AD becomes effective November 26, 2008.

On November 26, 2008 the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

We must receive comments on this AD by December 8, 2008.

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

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Greg Davison, Glider Program Manager, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; fax: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued AD No.: 2008–0186–E, dated October 9, 2008 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

Investigations performed following a report about a fuel leakage in a Stemme S10–V powered-sailplane revealed that some fuel lines fabricated between March 2008 and May 2008, after the introduction of a new pressing tool, present a manufacturing defect which could lead to the puncture of the fuel lines.

For the reason stated above, this Airworthiness Directive (AD) mandates, as an initial phase, repetitive inspections of the fuel lines until their replacement, by new ones which conform to the approved original specifications, is implemented as a final fix.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Stemme GmbH & Co. KG has issued Stemme F & D Service Bulletin A31–10–084 Am.-Index: 01.a, dated October 1, 2008. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all information provided by the State of Design Authority and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are described in a separate paragraph of the AD. These requirements take precedence over those copied from the MCAI.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because investigations performed following a report about a fuel leakage in a Stemme S10–V powered sailplane revealed that some fuel lines fabricated between March 2008 and May 2008, after the introduction of a new pressing tool, present a manufacturing defect which could lead to the puncture of the fuel lines. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–1161; Directorate Identifier 2008–CE–067–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2008–23–05 Stemme GmbH & Co. KG: Amendment 39–15726; Docket No. FAA–2008–1161; Directorate Identifier 2008–CE–067–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective November 26, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Models S10 and S10–V gliders, serial numbers 10–32, 10–53, 14–025, and 14–027, certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 73: Engine Fuel & Control.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

''Investigations performed following a report about a fuel leakage in a Stemme S10–V powered-sailplane revealed that some fuel lines fabricated between March 2008 and May 2008, after the introduction of a new pressing tool, present a manufacturing defect which could lead to the puncture of the fuel lines.

''For the reason stated above, this Airworthiness Directive (AD) mandates, as an initial phase, repetitive inspections of the fuel lines until their replacement, by new ones which conform to the approved original specifications, is implemented as a final fix.''

Actions and Compliance

(f) Unless already done, do the following actions:

(1) Before every flight after November 26, 2008 (the effective date of this AD) until accomplishment of paragraph (f)(2) of this AD, inspect the fuel lines in the engine compartment (pressed lines) following Stemme F & D Service Bulletin A31–10–084 Am.-Index: 01.a, dated October 1, 2008.

(2) Before further flight where any leakage is found as a result of any inspection required in paragraph (f)(1) of this AD or within the next 25 days after November 26, 2008 (the effective date of this AD), whichever occurs first, replace all the fuel lines in the engine compartment (pressed lines) following Stemme F & D Service Bulletin A31–10–084 Am.-Index: 01.a, dated October 1, 2008. Replacement of all fuel lines in the engine compartment (pressed lines) terminates the repetitive inspection requirement of paragraph (f)(1) of this AD.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Greg Davison, Glider Program Manager, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; fax: (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to European Aviation Safety Agency (EASA) AD No.: 2008–0186–E, dated October 9, 2008, and Stemme F & D Service Bulletin A31–10–084 Am.-Index: 01.a, dated October 1, 2008, for related information.

Material Incorporated by Reference

(i) You must use Stemme F & D Service Bulletin A31–10–084 Am.-Index: 01.a, dated October 1, 2008, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Stemme GmbH & Co. KG, Flugplatzstrae F2, Nr. 7, D–15344 Strausberg, Germany; telephone: +49–33–41–3612–0; fax: +49–33–41–3612–30; Internet: *http://www.stemme.de/daten/d/service/a3110084_01a.pdf* ; e-mail: *P.Ellwanger@stemme.de.*

(3) You may review copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Kansas City, Missouri, on October 28, 2008.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–26235 Filed 11–5–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9431]

RIN 1545–BG58

Information Reporting on Employer-Owned Life Insurance Contracts

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations concerning information reporting on employer-owned life insurance contracts under section 6039I of the Internal Revenue Code (Code). This final regulation is necessary to provide taxpayers with guidance as to how the requirements of section 6039I should be applied. These regulations generally apply to taxpayers that are engaged in a trade or business and that are directly or indirectly a beneficiary of a life insurance contract covering the life of an insured who is an employee of the trade or business on the date the contract is issued.

DATES: *Effective Date:* These regulations are effective on November 6, 2008.

Applicability Date: These regulations are applicable for tax years ending after November 6, 2008.

FOR FURTHER INFORMATION CONTACT: Linda K. Boyd, 202–622–3970 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

The Pension Protection Act of 2006, Public Law 109–280, 120 Stat. 780 (2006), added sections 101(j) and 6039I to Code concerning employer-owned life insurance contracts.

Section 101(j)(1) provides that, in the case of an employer-owned life insurance contract, the amount of death benefits excluded from gross income under section 101(a)(1) shall not exceed an amount equal to the sum of the premiums and other amounts paid by the policyholder for the contract. For this purpose, an employer-owned life insurance contract is a life insurance contract that (i) is owned by a person engaged in a trade or business and under which such person is directly or indirectly a beneficiary under the contract, and (ii) covers the life of an insured who is an employee with respect to the trade or business on the date the contract is issued. An applicable policyholder is generally a person who owns an employer-owned life insurance contract, or a related person as described in section 101(j)(3).

Section 101(j)(2) provides exceptions to the general rule of section 101(j)(1) in the case of certain employer-owned life insurance contracts with respect to which certain notice and consent requirements are met. Those exceptions are based either on (i) the insured's status as an employee within 12 months of death or as a highly compensated employee or highly compensated individual, or (ii) the extent to which death benefits are paid to a family member, trust, or estate of the insured employee, or are used to purchase an equity interest in the applicable policyholder from a family member, trust or estate.

Section 6039I provides that every applicable policyholder that owns one or more employer-owned life insurance contracts shall file a return, at such time and in such manner as the Secretary shall prescribe by regulations, showing for each year the contracts are owned—

(1) The number of employees of the applicable policyholder at the end of the year;

(2) The number of such employees insured under such contracts at the end of the year;

(3) The total amount of insurance in force at the end of the year under such contracts;

(4) The name, address, and taxpayer identification number of the applicable policyholder and the type of business in which the policyholder is engaged; and

(5) That the policyholder has a valid consent for each insured employee (or, if not all such consents are obtained, the number of insured employees for whom such consent was not obtained).

Section 6039I(c) provides that any term used in section 6039I that is used in section 101(j) has the same meaning given that term by section 101(j).

Sections 101(j) and 6039I apply to life insurance contracts issued after August 17, 2006, except for a contract issued after that date pursuant to a section 1035 exchange for a contract issued before that date. For this purpose, a material increase in the death benefit or other material change causes the contract to be treated as a new contract except that, in the case of a master contract within the meaning of section 264(f)(4)(E), the addition of covered lives is treated as a new contract only with respect to those additional covered lives.

On November 13, 2007, the IRS published temporary regulations in the **Federal Register** (TD 9364) (72 FR 63806), which serve as the basis for a cross-reference notice of proposed rulemaking (REG–115910–07) (72 FR 63838).

The temporary regulations and notice of proposed rulemaking provide that the Commissioner may prescribe the form and manner of satisfying the reporting requirements imposed by section 6039I on applicable policyholders owning one or more employer-owned life insurance contracts issued after August 17, 2006. Pursuant to these regulations, on January 24, 2008, the IRS released Form 8925, ''Report of Employer-Owned Life Insurance Contracts'', for taxpayers to use to comply with the reporting requirements of section 6039I.

No public hearing was requested or held. The IRS received comments from one taxpayer. Those comments primarily concern the notice and consent requirements of section 101(j), rather than the reporting requirements of section 6039I. Accordingly, this Treasury decision adopts the proposed regulations without substantive change and removes the corresponding temporary regulations. In order to make the regulations more useful to taxpayers, this Treasury decision sets forth the information that is enumerated in section 6039I and required to be reported under that provision. The IRS and Treasury Departments will continue to consider the comments received in connection with any future published guidance under section 101(j).

Special Analyses

It has been determined that this Treasury Decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to this regulation.

In accordance with the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that the regulations will not have a significant economic impact on a substantial number of small entities. Even though a substantial number of small entities may be subject to the requirements of section 6039I, these final regulations do not require the reporting of information other than that which is specifically required by section 6039I. Further, the burden associated with completing the prescribed form is

minimal because the information required by section 6039I is readily available. Accordingly, the regulations will not have a significant economic impact on a substantial number of small entities and a regulatory flexibility analysis is not required.

Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Linda K. Boyd, Office of Associate Chief Counsel (Financial Institutions & Products). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by removing the entry for § 1.6039I–1T, and adding an entry in numerical order to read in part as follows:

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

Section 1.6039I–1 also issued under 26 U.S.C. 6039I. * * *

■ **Par. 2.** Section 1.6039I–1 is added to read as follows:

§ 1. 6039I–1 Reporting of certain employer-owned life insurance contracts.

(a) *Requirement to report.* Section 6039I requires every taxpayer that is an applicable policyholder owning one or more employer-owned life insurance contracts issued after August 17, 2006, to file a return showing the following information for each year the contracts are owned—

(1) The number of employees of the applicable policyholder at the end of the year;

(2) The number of such employees insured under such contracts at the end of the year;

(3) The total amount of insurance in force at the end of the year under such contracts;

(4) The name, address, and taxpayer identification number of the applicable policyholder and the type of business in which the policyholder is engaged; and

(5) That the applicable policyholder has a valid consent for each insured employee (or, if all such consents are not obtained, the number of insured employees for whom such consent was not obtained).

(b) *Time and manner of reporting.* Applicable policyholders owning one or more employer-owned life insurance contracts issued after August 17, 2006, must provide the information required under § 6039I by attaching Form 8925, ''Report of Employer-Owned Life Insurance Contracts'', to the policyholder's income tax return by the due date of that return, or by filing such other form at such time and in such manner as the Commissioner may in the future prescribe.

(c) *Effective/applicability date.* These regulations are applicable for tax years ending after November 6, 2008.

§ 1.6039I–1T [Removed]

■ **Par. 3.** Section 1.6039I–1T is removed.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

Approved: October 16, 2008.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E8–26424 Filed 11–5–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9424]

RIN 1545–BB61

Unified Rule for Loss on Subsidiary Stock

Correction

In rule document E8– 21006 beginning on page 53934 in the issue of Wednesday, September 17, 2008 make the following corrections:

§1.1502–13 [Corrected]

■ 1. On page 53948, in the first column, §1.1502–13(a)(4), in the second line ''(4) Application of other rules of law.'' should read ''(4) *Application of other rules of law.*''.

§1.1502–36 [Corrected]

■ 2. On page 53962, in the third column, §1.1502–36(c)(8)(ii) at *Example 6* (ii) (A), in the first paragraphs, in the 32nd line, ''CNOL))'' should read ''CNOL)''.

■ 3. On page 53964, in the second column, §1.1502–36(d)(4)(ii)(A), the first sentence, ''(A) Category A, Category B, and Category C attributes.'' should read ''(A) *Category A, Category B, and Category C attributes.*''.

■ 4. On page 53968, in the second column, §1.1502–36(d)(8) at *Example 1* (ii), in paragraphs (A) and (B), ''Example 1''should read ''*Example 1.*''.

■ 5. On page 53970, in the third column, §1.1502–36(d)(8) at *Example 4.* (i)(c) paragraph ''(1)'' should read, ''*1*''.

■ 6. On page the same page, in the second column, §1.1502–36(d)(8) at *Example 4.* (ii)(c) paragraph ''(1)'' should read,''(*1*)''.

■ 7. On page 53974, in the third column, §1.1502–36(d)(8) at *Example 8.* (i)(c)(*2*) paragraph ''(i)'' should read, ''(*i*)''.

■ 8. On page 53975, in the third column, §1.1502–36(d)(8) at *Example 8.* (ii)(c)(*2*) paragraph ''(i)'' should read, ''(*i*)''.

■ 9. On page 53977, in the first column, §1.1502–36(d)(8) at *Example 9.* (iv)(B) paragraph ''(1)'' should read, ''(*1*)''.

[FR Doc. Z8–21006 Filed 11–5–08; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[USCG–2008–0838]

RIN 1625–AA00

Safety Zone; Christmas Holiday Boat Parade Fireworks Event, Appomattox River, Hopewell, VA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a 420-foot radius safety zone on the Appomattox River in the vicinity of Hopewell, VA in support of the Christmas Holiday Boat Parade Fireworks Event. This action will protect the maritime public on the Appomattox River from the hazards associated with fireworks displays.

DATES: This rule is effective from 8 p.m. until 9 p.m. on December 6, 2008.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2008–0838 and are available online by going to *http://www.regulations.gov*, selecting the Advanced Docket Search option on the right side of the screen, inserting USCG–2008–0838 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. This

material is also available for inspection or copying at two locations: the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays and the Sector Hampton Roads, Norfolk Federal Building, 200 Granby St., 7th Floor, Norfolk, VA 23510 between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call LT Tiffany Duffy, Chief, Waterways Management Division, Sector Hampton Roads at (757) 668–5580. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On August 28, 2008, we published a notice of proposed rulemaking (NPRM) entitled Safety Zone: Christmas Holiday Boat Parade Fireworks Event, Appomattox River, Hopewell, VA, in the **Federal Register** (73 FR 168). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

On December 6, 2008, the City of Hopewell, VA will sponsor a fireworks display on the Appomattox River centered on position 37°19′34″ N/ 77°16′00″ W (NAD 1983). Due to the need to protect mariners and spectators from the hazards associated with the fireworks display, access to the Appomattox River within a 420 foot radius of the fireworks barge will be temporarily restricted.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. Although this regulation restricts access to the safety zone, the effect of this rule will not be significant because: (i) The safety zone will be in effect for a limited duration; (ii) the zone is of limited size; and (iii) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. However, this rule may affect the following entities, some of which may be small entities: Owners and operators of vessels intending to transit or anchor in that portion of the Appomattox River from 8 p.m. to 9 p.m. on December 6, 2008. Although this regulation restricts access to the safety zone, the effect of this rule will not significantly impact small entities because: (i) The safety zone will be in effect for a limited duration; (ii) the zone is of limited size; and (iii) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

Technical Standards

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

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

Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T05–0838, to read as follows:

§ 165.T05–0838 Safety Zone: Christmas Holiday Boat Parade Fireworks Event, Appomattox River, Hopewell, VA.

(a) *Regulated Area.* The following area is a safety zone: All navigable waters of the Captain of the Port Sector Hampton Roads zone, as defined in 33 CFR 3.25–10, in the vicinity of the Appomattox River in Hopewell, VA within 420 feet of position 37°19′34″ N/77°16′00″ W (NAD 1983).

(b) *Definitions.* As used in this section, Captain of the Port Representative means any U.S. Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Hampton Roads, Virginia to act on his behalf.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, Hampton Roads or his designated representatives.

(2) The operator of any vessel in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(3) The Captain of the Port, Hampton Roads and the Sector Duty Officer at Sector Hampton Roads in Portsmouth, Virginia can be contacted at telephone number (757) 668–5555.

(4) The Captain of the Port Representative enforcing the safety zone can be contacted on VHF–FM marine band radio, channel 13 (156.65 Mhz) and channel 16 (156.8 Mhz).

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

(e) *Enforcement Period.* This rule will be enforced from 8 p.m. to 9 p.m. on December 6, 2008.

Dated: October 17, 2008.

Patrick B. Trapp,

Captain, U.S. Coast Guard, Captain of the Port, Hampton Roads.

[FR Doc. E8–26523 Filed 11–5–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 261

RIN 0596–AC38

Clarification for the Appropriate Use of a Criminal or a Civil Citation To Enforce Mineral Regulations

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends certain Forest Service regulations to allow, if necessary, for a criminal citation to be issued for unauthorized mineral operations on National Forest System (NFS) lands.

DATE: The final rule is effective December 8, 2008.

ADDRESSES: The documents used to develop this final rule, along with comments, including names and addresses when provided are placed in the record and are available for inspection and copying. The public may copy or inspect these items at the Office of the Director, Minerals and Geology Management (MGM), Forest Service, USDA, 1601 N. Kent Street, 5th Floor, Arlington, VA 22209 during regular business hours (8:30 a.m. to 4 p.m.), Monday through Friday except holidays. Visitors are encouraged to call ahead at (703) 605–4545 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Ivette Torres, Minerals and Geology Management Staff, (703) 605–4792, or electronic mail to *itorres@.fs.fed.us.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background and Need for Proposed Rule

The Forest Service currently uses two enforcement options, civil and criminal, to enforce its mining regulations at 36 CFR part 228, subpart A. Criminal enforcement pursuant to 36 CFR part 261, subpart A is often preferred in those situations that are factually straightforward and where immediate action is needed, and other resolutions have failed.

In 1984, a federal district judge ruled in an unpublished decision, *United States* v. *Craig,* No. CR–82–8–H, slip op. at 9–10 (D. Mont. Apr. 16, 1984), that the prohibitions at 36 CFR 261.10 did not apply to locatable mineral operations subject to 36 CFR part 228, subpart A. On August 4, 1983, during the pendency of the *Craig* prosecution, the Forest Service issued a proposed rule to amend 36 CFR part 261, subpart A. Among the proposed amendments to that subpart, were adding the phrase ''or approved operating plan'' at end of both 36 CFR 261.10(a) and the section presently designated as 36 CFR 261.10(l). On June 21, 1984, the Forest Service adopted the proposed rule, including these amendments. The applicability of these sections to locatable mineral operations was further clarified in 1990 when a definition of the term ''operating plan'' was added to 36 CFR 261.2.

In *United States* v. *McClure,* 364 F. Supp.2d 1183, 1183–84 (E.D. Cal. 2005), the Forest Service cited the defendant for operating a gold mining suction dredge without obtaining prior Forest Service authorization. The citation charged the miner with violating 36 CFR 261.10(k) which prohibits use or occupancy of NFS lands without a special use authorization. *Id.* 1183. The judge determined that the miner's gold dredging operations were subject to 36 CFR part 228, subpart A (*id.* at 1185) and consequently, pursuant to 36 CFR 251.50(a), those operations were not special uses for which a special use authorization may be issued (*Id.* 1186). Accordingly, the court dismissed the charge that the miner violated 36 CFR 261.10(k) by occupying NFS lands without a special use authorization. *Id.* 1187.

Given the *McClure* decision, this Department believes it is again advisable to amend 36 CFR part 261, subpart A to clearly provide that conducting unauthorized locatable mineral operations subject to 36 CFR part 228, subpart A, or other unauthorized mineral operations subject to different subparts of 36 CFR part 228, is prohibited by 36 CFR part 261, subpart A and may lead to the operator's criminal prosecution. The Regions dealing with suction dredge operators are particularly concerned about the effects of the two adverse rulings on their use of prohibitions set forth in 36 CFR part 261.

The amendments to 36 CFR part 261, subpart A rely on the Forest Service's clear statutory authority to adopt regulations providing for the issuance of a criminal citation to persons who commit prohibited acts on NFS lands. The amendments reflect the clear distinction between a special-use authorization and an operating plan as those terms are defined at 36 CFR 261.2. They also define the term ''residence'' to clarify a prohibition concerning shelters and structures on NFS lands used as living or sleeping quarters. The amendments apply to all persons conducting mineral operations subject to any subpart of 36 CFR part 228, including locatable mineral operations subject to subpart A.

The Forest Service recognizes that it cannot preclude use and occupancy of NFS lands for locatable mineral operations, including camping or residential use, if those operations are conducted so as to minimize their adverse environmental impacts, the operations are limited to locatable mineral prospecting, exploration, development, mining, processing, reclamation, closure and those uses reasonably incidental thereto, and the operations are appropriate in terms of their type, duration, and stage. However, this does not preclude Forest Service adoption of rules requiring written authorization for some or all of these operations by means such as a notice of intent to conduct operations or an approved plan of operations when the Forest Service deems it appropriate. Nonetheless, this rulemaking has no effect whatsoever on a miner conducting operations specified by 36 CFR 228.4(a)(1) that do not require prior notice to the Forest Service. Nor does this rulemaking have any affect whatsoever on a miner's duty to submit a notice of intent to conduct locatable mineral operations, including reasonably incidental camping, which might cause significant disturbance of surface resources. Nor does this rulemaking have any effect whatsoever on a miner's need to obtain approval of a plan of operations, and if necessary, a reclamation bond, to conduct locatable mineral operations, including reasonably incidental camping, which will likely cause significant disturbance of surface resources. Those matters continue to be governed by 36 CFR part 228, subpart A.

Analysis of Public Comment

Overview

The comment period opened on May 10, 2007, and closed on July 9, 2007. Forty-three responses were received asking for an extension of the comment period and for public meetings. Most of these requests were identical in wording with just different names. The agency decided not to hold public meetings since it was the middle of the field season, but did reopen the comment period on the proposed rule for another 30 day comment period, beginning on October 23, 2007, and closing on November 23, 2007. The Forest Service received a total of 86 responses to the proposed rule (72 FR 59979).

Two comments were received in favor of the rule as written. Two industry organizations supported the basic idea of the proposed rule, but suggested minor revisions. Eighty-two comments were received that opposed the proposed rule primarily on the grounds that the Forest Service did not have the authority to use criminal citations for locatable mineral operations. Most of the 82 comments in opposition to the proposed rule were submitted by individuals, many of whom identified themselves as prospectors or miners in small scale mining operations.

Commenters who opposed the rule primarily thought the Forest Service did not have the authority to issue criminal citations for locatable mineral operations. Almost invariably, they said 36 CFR part 261, subpart A is statutorily inapplicable to persons conducting locatable mineral operations pursuant to the United States mining laws. Those respondents pointed to provisions of the Forest Service's Organic Administration Act of 1897 or the United States mining laws they said the rule would violate.

Many of the respondents also said the rule would be inconsistent with existing Forest Service regulations pointing to three different parts of Title 36 of the Code of Federal Regulations. A small number of respondents opposed the rule on the ground that this rulemaking is invalid for other reasons. Most of them asserted that the rulemaking violates other Federal law or regulation. A few question the rule's consistency with other materials, not all of which are Federal.

Several respondents' comments were obvious copies from comments sent in responding to the **Federal Register** Notice of July 9, 2004, (69 FR 41428) ''Clarification as to When a Notice of Intent to operate and/or Plan of Operations is Needed for Locatable Mineral Operations on National Forest System lands.'' These comments will

not be listed since they do not apply to this rulemaking. Many comments to the proposed rule were very similar in content. Consequently, similar comments were combined and responded to only once.

All comments submitted on the proposed rule and the administrative record are available for review in the Office of the Director, Minerals and Geology Management, 1601 N. Kent St., 5th Floor, Arlington, Virginia 22209, during regular business hours (8:30 a.m. to 4 p.m.), Monday through Friday, except Federal holidays. Those wishing to view the comments and the administrative record should call in advance to arrange access to the building (See: **FOR FURTHER INFORMATION CONTACT**).

General Comments

Occupancy and Forest ''Stay Limits''

Several commenters asked for a clarification about how local forest ''stay limits'' on recreational camping apply to locatable mineral activities. Regardless of the local stay limit, reasonably incidental residential use of NFS lands by persons conducting locatable mineral prospecting, exploration, mining, or processing that might cause significant disturbance of NFS surface resources requires prior submission of a notice of intent to conduct operations. Reasonably incidental residential use of NFS lands by persons conducting locatable mineral prospecting, exploration, mining, or processing that is likely to cause, or is causing, a significant disturbance of NFS surface resources must be authorized by an approved plan of operations. Reasonably incidental residential use of NFS lands by persons conducting locatable mineral prospecting, exploration, mining, or processing that will not cause significant disturbance of NFS surface resources does not require prior submission of a notice of intent to conduct operations or approval of a plan of operations. When the probability of significant NFS surface resource disturbance is being evaluated in connection with locatable mineral operations consisting of appropriate prospecting, exploration, development, mining, processing, reclamation and closure, and accompanying reasonably incident residential use of NFS lands, the operations in their totality, including the reasonably incidental residential use, must be considered. Residential use of NFS lands which is not reasonably incidental to appropriate locatable mineral prospecting, exploration, development, mining, processing, or reclamation and closure operations being conducted by miners on NFS lands pursuant to 36 CFR part 228, subpart A is impermissible unless it complies with requirements pertaining to special uses of NFS lands, including an applicable stay limit.

An operator, consequently, is not required to notify the Forest Service prior to conducting locatable mineral operations which involve occupancy of NFS lands providing that those operations meet two conditions: (1) The occupancy is reasonably incidental to locatable mineral prospecting, exploration, mining, or processing and (2) those proposed (or ongoing) operations, including such reasonably incidental occupancy, cumulatively will not cause (or are not causing) significant disturbance of NFS surface resources. Moreover, when occupancy is reasonably incidental to prospecting, exploration, mining, and processing operations, then the level of surface disturbance, not the duration of the occupancy, will determine whether a Notice of Intent or a Plan of Operations is required. For example, no Forest Service authorization is needed if a miner wants to camp on his mining claim while suction dredging under a state permit and the authorized officer determines that the proposed operation meets the two conditions above.

Specific Comments

Comment: Several commenters questioned the Forest Service's authority to criminally enforce any Forest Service regulation.

Response: The Organic Administration Act of 1897 confers authority upon the Department to promulgate regulations protecting the NFS as well as making contravention of those protective rules a criminal offense for which a fine or imprisonment may be imposed. That authority flows from 16 U.S.C. 551, a portion of the Organic Administration Act providing in pertinent part:

> The Secretary of Agriculture shall make provisions for the protection against destruction by fire and depredations upon the public forests and national forests * * *; and he may make such rules and regulations * * * as will insure the objects of such reservations, namely, to regulate their occupancy and use and to preserve the forests thereon from destruction; and any violation of * * * such rules and regulations shall be punished by a fine * * * or imprisonment * * *, or both.

Doubts regarding the legality and scope of the Department's authority under 16 U.S.C. 551 were dispelled in 1911 by the United States Supreme Court's decision in *United States* v. *Grimaud,* 220 U.S. 506 (1911). In *Grimaud*, the Supreme Court rejected a challenge to 16 U.S.C. 551 on the ground it ''was unconstitutional, in so far as [Congress] delegated to the Secretary of Agriculture power to make rules and regulations, and made a violation thereof a penal offense.'' The decision squarely holds that 16 U.S.C. 551 both authorizes the Department to adopt regulations governing the occupancy and use of NFS lands set aside from the public domain and provides that violation of such regulations is a criminal offense. *Id.* at 522–23.

Comment: Two respondents stated that the Forest Service, in adopting this rule, is attempting to circumvent the decisions in *United States* v. *Lex,* 300 F. Supp. 2d 951 (E.D. Cal. 2003), and *U.S.* v. *McClure,* 364 F. Supp. 2d 1183 (E.D. Cal., 2005), claiming that the Forest Service has no authority to cite a miner under 36 CFR part 261.

Response: Nothing in *Lex* or *McClure* could, or purports to, restricts the Forest Service's clear authority to promulgate rules regulating the effects of locatable mineral resources on Forest Service lands. Indeed, the court specifically recognizes that one of the government's remedies for the court's adverse opinion is to amend 36 CFR part 261, subpart A.

> The Court understands that pursuing a Part 261 violation against a noncomplying miner is a preferred remedy since it is expeditious and often results in a probationary term which mandates the miner's compliance. Here, the Government is not without remedy. It has always had the option of pursuing civil abatement. Likewise, the Government is free to pursue criminal proceedings under appropriate sections of Part 261 for ''waste'' or ''resource destruction''; and Title 18 U.S.C. Similarly, it may simply choose to amend 261.10 to make criminal a miner's failure to file a notice of intent and/or plan of operation. See Lex & Waggener at 962.

United States v. *McClure,* 364 F. Supp. 2d 1183, 1186 n.7 (E.D. Cal. 2005).

In the earlier *Lex* decision, the court set aside the decision of a United States Magistrate convicting miners cited for violating 36 CFR § 261.10(b) which prohibits residential use or occupancy of NFS lands without authorization by means of a special use authorization or other Federal law or regulation. Here too, the court, after noting that it was not unsympathetic to the problematic effect of its decision upon Forest Service efforts to regulate the defendants, occupancy of NFS lands, specifically stated that ''[t]he solution to this problem * * * is to amend the regulations.* * *'' *United States* v. *Lex,* 300 F. Supp. 2d 951 (E.D. Cal. 2003).

Comment: Many respondents claimed that the Forest Service has no authority

to apply the prohibitions at 36 CFR part 261 provisions to mining or to restrict or regulate mining operations by means of 36 CFR part 261. Several believed the regulations at 36 CFR part 228, subpart A should be revised to include enforcement provisions and the regulations at 36 CFR part 261, subpart A should not be applicable to mining operations. Another believes that CFR part 228, subpart A precludes the application of the remaining regulations in Title 36, Chapter II to locatable mineral operations.

Response: The conclusion that 36 CFR part 261 is not applicable to locatable mineral operations conducted pursuant to the proposed rule or the remainder of 36 CFR part 228, subpart A, is directly contrary to the holding of *United States* v. *Doremus*, 888 F.2d 630, 631–32 (9th Cir. 1989). In *Doremus*, the appellants argued that their operations were authorized by the United States mining laws. Consequently, they contended that they were exempt from the prohibitions set forth at 36 CFR part 261 by virtue of 36 CFR 261.1(b), which, as the respondents note, states that ''[n]othing in this part shall preclude operations as authorized by * * * the U.S. Mining Laws Act of 1872 as amended.'' However, the court directly rejected their argument, stating that:

> Part 228 does not contain any independent enforcement provisions; it only provides that an operator must be given a notice of noncompliance and an opportunity to correct the problem. 36 CFR 228.7(b) (1987). The references to operating plans in § 261.10 would be meaningless unless Part 261 were construed to apply to mining operations, since that is the only conduct for which operating plans are required under Part 228. In addition, 16 U.S.C. 478 (1982), which authorizes entry into national forests for all proper and lawful purposes, including that of prospecting, locating, and developing the mineral resources thereof, specifically states that such persons must comply with the rules and regulations covering such national forests. This statutory caveat encompasses all rules and regulations, not just those (such as Part 228) which apply exclusively to mining claimants. In this context, § 261.1(b) is merely a recognition that mining operations may not be prohibited nor so unreasonably circumscribed as to amount to a prohibition. *United States* v. *Weiss,* 642 F. 2d 296, 299 (9th Cir. 1981).

Thus, ''[t]he law is clear that the Forest Service may proceed by criminal prosecution for violations of the regulations governing mining and protection of the National Forest lands.'' *United States* v. *Good,* 257 F.Supp.2d 1306, 1319 (D. Colo. 2003).

The additional regulations applicable to locatable mineral operations are not restricted to 36 CFR part 261, subpart A. Other portions of Title 36 of the Code of Federal Regulations which can govern locatable mineral operations include, but are not limited to, part 212, subpart A, which governs administration of the Forest Transportation System; part 215, which sets forth notice, comment and appeal procedures for NFS projects and activities; and part 251, subpart C, which sets forth procedures for appeal of decisions relating to NFS occupancy and use.

The Department disagrees with the suggestion to include all prohibitions applicable to locatable mineral operations in 36 CFR part 261, subpart A. While some prohibitions are uniquely applicable to miners, such as new Sec. 261.10(p), most are applicable to other NFS users, including amended Sec. 261.10(a), (b) and (l). Others such as 36 CFR 261.4 and 261.11, governing disorderly conduct and sanitation, respectively are applicable to all users of the NFS, including miners. Repeating all these generic prohibitions in the parts of Title 36, Chapter II relevant to different groups of NFS users clearly would be unwieldy. However, having the prohibitions targeted to specific users of NFS lands set forth in the CFR part applicable to those users while having the generic prohibitions in another part of the CFR could lead to persons being unfairly surprised about the scope of prohibited conduct.

For these reasons, no change has been made in the final rule as a result of these comments.

Comment: One respondent claimed that because 36 CFR 261.10 regulations are not mentioned in the 36 CFR part 228 subpart A regulations, the Forest Service has no authority to cite, using the 36 CFR 261.10 regulations.

Response: The Forest Service's authority to apply the 36 CFR 261.10 prohibitions to operations subject to 36 CFR part 228, subpart A is explained in the previous response.

Comment: Several respondents were concerned that the Forest Service District Rangers and Mineral administrators would overstep their authority and unduly use criminal citations as a ''fix'' for any mining related problem.

Response: The Forest Service has had the authority to use criminal citations for over 30 years and has not had a track record of overuse of the criminal citation authority. In fact, many respondents did not know the Forest Service had the authority to use criminal citations, adding weight to the fact that there is no history of abuse. Criminal citations have always been a tool of last resort. If noncompliance is not resolved through the process of communication and willing compliance, civil citations are usually considered before criminal citations. Criminal citations are only used when the facts of the noncompliance warrant a criminal citation. Further Forest Service Manual direction will be issued to ensure criminal citations are properly used.

Comment: Several respondents claimed that the proposed rule would increase the time needed for the Forest Service to process either a notice of intent or a plan of operations. The respondents asserted that such delay would be prohibitive in the context of small-scale mining operations.

Response: These comments reflect a fundamental misperception of the effect of this rule. The amendments to 36 CFR part 261, subpart A do not alter the requirements applicable to persons conducting mineral operations on NFS lands pursuant to 36 CFR part 228. The purpose of 36 CFR part 261, subpart A is to give the public notice of those few requirements set forth in other parts of the Forest Service's rules where violations have been made criminal. However, 36 CFR part 261, subpart A does not create the underlying requirements whose violation that subpart prohibits.

Comment: Many respondents complained about the fact that they were not personally notified about the proposed rule.

Response: Outside of publishing the proposed rule in the **Federal Register**, there is no legal requirement to notify every ''miner'' about the proposed rule. Some Forest Supervisors published news releases in local papers; some did not. Additional notification is not legally required. Several national mining organizations were notified of the proposed rule and asked to distribute to their members and associated organizations. Forty-three respondents asked for an additional 30-day comment period. The comment period was reopened on October 23, 2007, and closed on November 23, 2007.

Comment: Two respondents stated that the Small Business Administration (SBA) would find that the proposed rule will have a major impact on small entities given the SBA's finding that a purportedly similar rule, 43 CFR part 3800, subpart 3809, would have a major impact on small entities.

Response: The scope of the proposed rule only addresses a clarification for criminal citations for unauthorized occupancy and use of the National Forest and the authorization required for conducting locatable mineral operations on Forest Service lands. The proposed rule is dramatically less

sweeping than the scope of the proposed changes to 43 CFR part 3800, subpart 3809. While 43 CFR part 3800, subpart 3809, addresses a similar issue for lands administered by Bureau of Land Management (BLM), it additionally sets forth a host of other requirements. Therefore, any finding which the SBA made on the effect of 43 CFR part 3800, subpart 3809, on small entities consequently has exceedingly limited predictive value in terms of the SBA's possible assessment of the impact of the Forest Service's proposed and final rule.

Comment: Several respondents were concerned about the possible misuse of the criminal citations and quoted at length from the 2810 section of the Forest Service manual. They cautioned that before a person can be charged under 36 CFR part 261, the Forest Service must first demonstrate that a miner has violated 36 CFR part 228, subpart A.

Response: These amendments will require the revision of the Forest Service Manual to better explain under what circumstances the Forest Service will use criminal rather than civil enforcement measures. The revised manual will also include how the agency will monitor, manage, and prevent possible abuse of the criminal citations by untrained and unqualified Forest Service employees. Locatable minerals administration training will include an extra emphasis on the proper use of criminal citations. The Forest Service is reinforcing the agency policy of requiring only certified and qualified minerals administrators involved in determining when an operator is in noncompliance. The final rule will also require that Forest Service law enforcement personnel work only with Forest Service Certified Mineral Administrators to determine and document that an operator is in violation of 36 CFR part 228 subpart A, prior to issuing a violation notice under 36 CFR part 261, subpart A.

Comment: Several respondents asked how the Forest Service intends to reconcile its issuance of citations pursuant to 36 CFR part 261, subpart A with the noncompliance procedures already existing at 36 CFR 228.7.

Response: The revised Forest Service Manual and locatable minerals training discussed in previous responses will emphasize that criminal citations are tools of last resort, and 36 CFR 228.7 generally requires that a miner be served a notice of noncompliance prior to the Forest Service taking any kind of enforcement action. A Forest Service notice of noncompliance is a Forest Service decision, and consistent with 36 CFR 228.14, a miner will be given the opportunity to appeal the notice under 36 CFR part 251, subpart C. Furthermore, FSM 2817 requires that prior to any citation, except in emergency circumstances, the Forest Service has to work with the miner to secure willing compliance. Only after a reasonable effort has been made to secure the operator's willing compliance, will a notice of noncompliance generally be issued. Continued refusal by the miner to comply with the notice of noncompliance usually requires enforcement action. Enforcement action may be either civil or criminal in nature. The appropriate minerals staff, in addition to the Office of the General Counsel and the United States Attorney will be consulted prior to the citation of anyone operating under the United States mining laws.

Comment: Several respondents asked under what circumstances a criminal citation under 36 CFR part 261, subpart A would be issued.

Response: A criminal citation may be appropriate in cases where unnecessary and unreasonable damage is occurring and all reasonable attempts to obtain the operator's willing compliance with 36 CFR part 228, subpart A, or the terms of an approved plan of operations have failed.

Comment: Several respondents expressed their concern that criminal citations will be misused against miners who camp on their mining claims longer than a forest recreational camping limit.

Response: This comment concerns Forest Orders which limit the duration of temporary recreational camping on many National Forests depending on site conditions. In many places, campers are limited to a 14-day overnight stay, within a 30–60 day period, in a particular location. The purpose of such a Forest Order, also known as a ''stay limit,'' is to provide an enforceable standard pursuant to 36 CFR 261.58(a) which local Forest Service offices use to protect conditions at camping sites and prevent unlimited, unregulated recreational camping and associated impacts.

We agree that the potential for misuse of the criminal citations against operators camping on their mining claims exists. Additional training and direction will be given to the field that requires the Forest Service to distinguish between recreational campers and those who are legitimately carrying out activities under the United States mining laws. If an operator asserts that they are operating under the United States mining laws, and documents that need to camp on the site longer than the Forest recreational camping limit for the purpose of conducting locatable mineral operations that will not cause significant disturbance of NFS surface resources, the Forest Service is obligated to consider these facts prior to taking enforcement action under 36 CFR part 261. Furthermore, the training will emphasize that issuance of a citation pursuant to 36 CFR part 261, subpart A is inappropriate unless the Forest Service believes that the proposed or ongoing operations, including the reasonably incidental camping, require prior submission and approval of a plan of operations. This requirement flows from the fact that the prohibitions set forth at 36 CFR part 261, subpart A are predicated upon an operator's failure to obtain a required plan of operations under 36 CFR 228.4(a), not upon the operator's failure to submit a notice of intent to conduct operations.

Thus, regardless of the local stay limit, an operator is not required to submit a notice of intent to conduct operations unless the locatable mineral prospecting, exploration or mining, and processing, and the reasonably incidental camping, might cause significant disturbance of NFS surface resources. Moreover, as discussed above, an approved plan of operations is not required for the locatable mineral prospecting, exploration or mining, and processing, and the reasonably incidental camping, unless those operations are likely to cause a significant disturbance of surface resources. An operator, consequently, is not required to notify the Forest Service prior to conducting locatable mineral operations which involve occupancy of NFS lands providing that those operations meet two conditions: (1) The occupancy is reasonably incidental to locatable mineral prospecting, exploration, mining, or processing and (2) those proposed (or ongoing) operations, including such reasonably incidental occupancy, cumulatively will not cause (or are not causing) significant disturbance of NFS surface resources.

This process is consistent with the United States mining laws, in particular 30 U.S.C. 22 and 612, which grant an operator the right to occupy Federal lands subject to the United States mining laws for locatable mineral prospecting, exploration, mining, and processing operations and uses reasonable incidental thereto. Accordingly, where the proposed occupancy of NFS is reasonably incidental to prospecting, exploration, mining, and processing operations, the level of surface disturbance of the operations in totality, including

reasonably incidental occupancy of NFS lands, not the duration of the occupancy, will determine whether submission of a notice of intent to conduct operations or submission and approval of a plan of operations is required. For example, a miner is not required to give prior notice to the Forest Service when the miner plans to camp on the miner's mining claim while suction dredging under a state permit if the miner believes that the proposed operation meets the two conditions above. However, the miner should be aware that if the authorized officer determines that those operations, whether proposed or ongoing, will likely cause or are causing, significant disturbance of NFS surface resources, the authorized office can require the miner to submit and obtain approval of a plan of operations and that those operations cannot be conducted until the plan is approved pursuant to 36 CFR 228.4(a)(4).

Comment: Several respondents thought that including caves and cliff ledges in the new definition of the term ''residence'' at 36 CFR 261.2 is unnecessary. Another commenter objected to the inclusion of tunnels in the definition because the Forest Service does not have authority over operations occurring underground.

Response: The Department agrees that the Forest Service generally does not have authority to regulate locatable mineral operations conducted underground. However, the Forest Service's regulatory authority does extend to locatable mineral operations conducted underground if those operations may or are likely to cause significant disturbance of NFS surface resources. Nonetheless, the Department agrees that it is so unlikely that a miner would reside in caves or tunnels or on cliff ledges, with or without authorization, that inclusion of those terms in the new definition of residence is unnecessary.

For these reasons, the final rule's definition of the term ''residence'' does not include the caves, cliff ledges, or tunnels.

Comment: Several respondents recommended that the final rule should contain a clarification that states under the United States mining laws an operator may ''use and occupy'' NFS lands under a notice as long as the use and occupancy is reasonably incidental to prospecting, exploration, mining, and processing, and there is no significant disturbance of surface resources.

Response: The Department agrees with the respondents' conclusions about the scope of the United States mining laws as reflected by the answer to a previous comment. The Department believes that the extensive treatment of this issue in that answer and in the upcoming revision of the Forest Service Manual together with the emphasis that will be placed on it in Forest Service's training concerning the amendments adequately responds to the comment.

Comment: Several respondents suggested that the final rule should clarify that the special use regulations, 36 CFR part 251, subpart B, do not apply to locatable mineral operations on NFS lands.

Response: The preamble to the May 10, 2007 proposed rulemaking (72 FR 26578) expressly makes the point that *United States* v. *McClure*, 364 F. Supp.2d 1183, 1183–84 (E.D. Cal. 2005) directly holds that the special uses regulations at 36 CFR part 251, subpart B do not govern locatable mineral operations conducted on NFS lands themselves. (The same discussion appears in the preamble for this final rule.) This holding is based on 36 CFR 251.50(a) which this Department agrees the courts properly interpreted.

However, the Department notes that a mineral operator who also is using NFS lands in a manner not within the scope of the statutes authorizing the regulations at 36 CFR part 228 might be subject to the special uses regulations at 36 CFR part 251, subpart B as well as 36 CFR part 228, subpart A. Yet even assuming that the operations being conducted by an operator are regulated pursuant to 36 CFR part 228 alone, the prohibitions in proposed 36 CFR 261.10(a) and (b) are applicable to the mineral operator if a provision in 36 CFR part 228 requires the operator to hold an approved operating plan as that term is defined by proposed 36 CFR 261.2.

Some respondents appear to have been confused by the retention of the reference to a ''special use authorization'' in Sec. 261.10(a) and (b) given that those provisions also refer to an ''operating plan.'' The reference to a special use authorization in proposed and final Sec. 261.10(a) and (b) does not reflect this Department's contention that mineral exploration, development and mining constitute special uses subject to 36 CFR part 251, subpart B instead of operations subject to 36 CFR part 228. Rather, the retention of the special use authorization reference reflects that fact that the prohibitions in those sections apply in two different contexts. One is the use of NFS lands by persons conducting operations pursuant to the United States mining laws subject to 36 CFR part 228, subpart A. The other independent category is use of NFS lands that constitutes a special use governed by 36 CFR par 251, subpart B. Indeed, the fact that 36 CFR 261.10(b) is being amended to reference an ''approved operating plan'' as well as a ''special use authorization'' demonstrates that the two documents are mutually exclusive. (The applicability of 36 CFR 261.10(p) is undisputable given that it solely pertains to those mineral operations for which an operating plan, as that term is defined by section 36 CFR 261.2, is required.)

Comment: Several respondents believe that the amendments to 36 CFR part 261, subpart A will deny them due process.

Response: The amendments to 36 CFR part 261, subpart A adopted by this rule do not deny locatable mineral operators due process. Miners are being given notice of the amended prohibitions by means of the rulemaking and the codification of those prohibitions in 36 CFR part 261, subpart A. The amended prohibitions clearly are tied to locatable mineral operations subject to the requirements of 36 CFR part 228, subpart A which mandate an approved plan of operations when the operations are likely to cause significant disturbance of NFS surface resources.

A citation issued pursuant to 36 CFR part 261, subpart A will not be the operator's first notice that the Forest Service believes that operations the operator is conducting require an approved operating plan. When unauthorized operations unnecessarily or unreasonably cause injury, loss or damage to surface resources, 36 CFR 228.7(b) requires the authorized officer to first serve a notice of noncompliance upon the operator. Pursuant to the requirements of the Forest Service Manual, the authorized officer then must make a reasonable effort through negotiation to secure the miner's willing cooperation in bringing the operations into compliance with 36 CFR part 228, subpart A. The Forest Service also will give the operator a reasonable opportunity to complete actions required to bring the operations into compliance with 36 CFR part 228, subpart A. If the operator disagrees with the authorized officer's decision to issue a notice of noncompliance, the operator may administratively appeal that decision utilizing the procedures in 36 CFR part 251, subpart C. Finally, an operator who is issued a Citation will receive all legally required due process procedures for the imposition of a criminal penalty when the operator appears for trial before a United States Magistrate Judge or a United States District Court Judge in accordance with

Rule 58 of the Federal Rules of Criminal Procedure.

Comment: Several respondents observed that the definition of the term ''residence'' in proposed 36 CFR 261.2 is contradictory because it lists tents and recreational vehicles among the shelters and structures that can be a residence, yet the paragraph's final clause excludes ''structures or objects used for camping'' from the definition.

Response: The Department agrees that the proposed definition is not clear. It is revised in this final rule to provide: ''Residence means any structure or shelter, whether temporary or permanent, including, but not limited to, buildings, buses, cabins, campers, houses, lean-tos, mills, mobile homes, motor homes, pole barns, recreational vehicles, sheds, shops, tents and trailers, which is being used, capable of being used, or designed to be used, in whole or in part, full or part-time, as living or sleeping quarters by any person, including a guard or watchman.'' As revised, the definition is consistent with the Department's intent.

Comment: Several respondents suggested adding metal detectors to the list of motorized equipment not requiring a plan of operation. Others suggested adding small hand operated drills and rocks saws.

Response: The definition of ''motorized equipment'' in 36 CFR 261.2 does not affect the requirements of 36 CFR part 228, subpart A which are applicable to locatable mineral operations conducted pursuant to the United States mining laws. The prefatory language in proposed 36 CFR 261.2 specifically provides that the definitions set forth in that section ''apply to this part,'' that is, 36 CFR part 261. Indeed, this definition is only relevant to two prohibitions, 36 CFR 261.18(a) and 36 CFR 261.21(b), which govern the conduct of all users of National Forest Wilderness and National Forest primitive areas, including mineral operators. The effect of the proposed amendment also appears to have been cause for great alarm to the persons who commented on the proposed rule. For these reasons, the definition of the term ''motorized equipment'' is not being amended by this final rule.

Comment: Five respondents commented that the Forest Service violated the Regulatory Flexibility Act by failing to prepare and make available for public comment a regulatory flexibility analysis on the rule's potential economic costs on heritage, individuals, development, and productivity. Additionally, those respondents stated that these violations of the Regulatory Flexibility Act also constitute a violation of the Congressional review requirements at 5 U.S.C. 801(a)(1)(B)(iii) and (iv).

Response: Prior to publishing the proposed rule in the **Federal Register**, the Office of Management and Budget (OMB) reviewed the proposed rule and determined that it was not a significant rulemaking. Consequently, the economic analysis described by the comment was not required.

Given that the Forest Service did not violate the Regulatory Flexibility Act in promulgating the proposed rule, there is no cumulative violation of 5 U.S.C. 801(a)(1)(B)(iii) and (iv).

Comment: Several respondents believe the wording of the proposed rule implies that the rule would ''override'' or ''change'' the United States mining laws and was therefore illegal. Several respondents stated that the Forest Service can not amend the United States mining laws, the Mining and Mineral Policy Act of 1970, or the Surface Resource Act of 1955 by issuing administrative rules. Four respondents stated that the Forest Service can not substitute its regulatory authority under the 1897 Organic Act for that of the United States mining laws.

Response: The Department agrees that only the United States Congress has authority to make or amend Federal laws. However, the changes to 36 CFR part 261, subpart A do not amend, change or alter any Federal laws. Nor does the proposed regulation conflict with the United States mining laws.

As discussed above, the statutory authority to regulate locatable mineral operations conducted on NFS lands that may disturb surface resources clearly both exists and has been delegated to the Sectary of Agriculture, not the Secretary of the Interior. ''[T]here can be no doubt that the Department of Agriculture possesses statutory authority to regulate activities related to mining * * * in order to preserve the national forests.'' *Clouser* v. *Espy*, 42 F.3d 1522, 1530 (9th Cir. 1994), *cert. denied sub nom. Clouser* v. *Glickman*, 515 U.S. 1141 (1995). Indeed, ''[s]ince 1897 the Secretary of Agriculture has had authority under sections 478 and 551 of Title 16 [The Organic Administration Act of 1897] to promulgate regulations concerning the methods of prospecting and mining in national forests. * * *'' *United States* v. *Richardson*, 599 F.2d 290, 292 (9th Cir. 1979).

As also discussed above, this Department has authority to adopt regulations prohibiting conduct on NFS lands and to permit the issuance of a criminal citation for the violation of those prohibitions. Responses to previous comments demonstrate that there is no reasonable basis to doubt the legality of applying the prohibitions set forth in 36 CFR part 261, subpart A to operations conducted pursuant to the United States mining laws.

For these reasons, these comments did not warrant changing the final rule.

Comment: Two respondents stated that the proposed rule violated E.O. 13132 by permitting the Forest Service to regulate locatable mineral operations taking place in waters, failing to disclose the rule's effect upon Federalism principles, and failing to consult with affected State and local officials. The commenters further asserted the Department's violation of E.O. 13132 also violates 5 U.S.C. 801(a)(1)(B)(iii) and (iv).

Response: E.O. 13132 is only applicable to rulemakings having Federalism implications which by definition are those ''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'' (Sec. 1(a)). This rulemaking amends the list of prohibited actions involving occupancy of National Forest System lands set forth in 36 CFR 261.10. If a person commits an act prohibited by 36 CFR 261.10, that person may receive a citation pursuant to 36 CFR part 261, subpart A which initiates a criminal misdemeanor prosecution in federal court pursuant to Fed. R. Crim. P. 58. Such a prosecution does not have substantial direct effects on States, the relationship between the Federal government and the States, or the distribution of power and responsibilities among the various levels of government.''

For these reasons, in proposing or adopting the amendments to 36 CFR part 261, subpart A, the Department did not violate E.O. 13132 or cumulatively violate 5 U.S.C. 801(a)(1)(B)(iii) and (iv).

Given that the Forest Service did not violate E.O. 13132 in promulgating the proposed rule, there is no cumulative violation of Congressional reporting requirements.

Comment: One respondent claimed that the proposed rule's bonding requirement was preclusive in that a bond would be required for every mining operation regardless of size or impact level.

Response: The proposed rule does not address bonding requirements. Bonding requirements are described at 36 CFR 228.13. Indeed, as discussed above, this rule does not impose any requirement governing locatable mineral operations.

Comment: One respondent stated that the proposed rule is ''time prohibitive'' in that there are no time limits on processing either a notice of intent or a plan of operations.

Response: Nothing in the proposed rule addresses time limitations on processing notices or plans of operation, nor should it. Time limitations are addressed in the regulations at 36 CFR part 228, subpart A. Again, this rule does not impose any requirement governing locatable mineral operations.

Comment: Four respondents stated that nowhere in the history of the 36 CFR part 228, subpart A regulations (from 1974) did the Forest Service ever tell Congress that the Forest Service would ever issue a criminal citation pursuant to 36 CFR part 261 to enforce the locatable mineral regulations.

Response: Given the passage of 35 years, it is impossible to determine what representatives of the Department told representatives of Congress in connection with the promulgation of the regulations currently designated as 36 CFR part 228, subpart A. In any event, the will of an individual Congressman, or even a Congressional committee, must be distinguished from the will of Congress, as a legislative body that enacts, amends and repeals laws, usually by majority vote. Insofar as the Department's authority with respect to locatable mineral operations on NFS lands is concerned, Congress as a body passed legislation transferring to the Secretary of Agriculture the authority to administer NFS lands reserved from the public domain except as provided by the Transfer Act of 1905. Thus, the Department is charged to administer these lands under the terms of the Organic Administration Act.

Members of Congress certainly have learned of judicial decisions, including, without doubt, *United States* v. *Doremus*, 888 F.2d 630, 632 (9th Cir. 1989), *cert. denied*, 498 U.S. 1046 (1991), the first Court of Appeals decision holding that the prohibitions in 36 CFR part 261, subpart A apply to persons operating on NFS lands under the United States mining laws and 36 CFR part 228, subpart A. However, Congress as a legislative body took no action to enact legislation depriving the Department of this authority had it been Congress' intent to do so. Thus, there is no reason to suppose that Congress as a legislative body has an intent different from what it had in enacting the Organic Administration Act and the Transfer Act. As explained by the Supreme Court in *United States* v. *Grimaud*, 220 U.S. 506, 517 (1911), pursuant to that Congressional intent, the Department ''is required to make provision to protect [the forest reservations] from depredations and from harmful uses'' and ''to regulate the occupancy and use and to preserve the forests from destruction.'' The Department's promulgation of both 36 CFR part 228, subpart A and 36 CFR part 261, subpart A serve to fulfill those twin Congressional intents.

Comment: Who has the right to decide what mineral operations are ''unauthorized''?

Response: The District Ranger, not a Forest Service Law Enforcement Officer, makes the determination whether mineral operations are consistent with 36 CFR part 228, subpart A.

Comment: One respondent stated the Forest Service has no jurisdiction to administer activities conducted under the United States mining laws.

Response: Clearly, the Secretary of the Interior is statutorily charged with the administration of the United States mining laws. However, there is a difference between administering the United States mining laws and regulating locatable mineral operations conducted on NFS lands that may disturb surface resources.

United States v. *Weiss*, 642 F.2d 296, 298 (9th Cir. 1981) holds ''the Act of 1897, 16 U.S.C. 478 and 551, granted to the Secretary the power to adopt reasonable rules and regulations regarding mining operations within the national forests.'' That holding has never been meaningfully questioned by any court. Consequently, ''[t]he Forest Service may properly regulate the surface use of forest lands. While the regulation of mining per se is not within Forest Service jurisdiction, where mining activity disturbs national forest lands, Forest Service regulation is proper.'' *United States* v. *Goldfield Deep Mines Co.*, 644 F.2d 1307, 1309 (9th Cir. 1981), *cert. denied*, 455 U.S. 907 (1982). Simply put, ''there can be no doubt that the Department of Agriculture possesses statutory authority to regulate activities related to mining * * * in order to preserve the national forests. *Clouser* v. *Espy,* 42 F.3d 1522, 1530 (9th Cir. 1994), *cert. denied sub nom. Clouser* v. *Glickman*, 515 U.S. 1141 (1995).

Comment: Several respondents claimed that the Forest Service violated the Endangered Species Act (ESA) by failing to engage in formal consultation with the Department of the Interior before publishing the proposed rule. Those respondents further said that the violation of the ESA also constitutes a violation of Congressional review requirements.

Response: This rulemaking has no impact on any threatened or endangered species or the habitat of a threatened or endangered species. As discussed previously, the rule amends 36 CFR part 261, subpart A, which specifies prohibited acts whose commission by a person conducting mineral operations pursuant to 36 CFR part 228 may result in that person being charged with committing a misdemeanor. However, 36 CFR part 261, subpart A does not create the underlying requirements whose violation that subpart prohibits. Rather, those circumstances requiring an approved operating plan are set forth in the subpart of 36 CFR part 228 applicable to the mineral operations in question. The ESA consequently imposes no obligation upon the Forest Service to engage in formal consultation before the agency receives a proposed plan of operations from a miner. Given that the Forest Service did not violate the ESA in promulgating the proposed rule, there is no cumulative violation of Congressional review requirements.

Comment: A number of commenters contend that the Forest Service's adoption of the amendments to 36 CFR part 261, subpart A will violate Executive Order 12630 which requires Federal agencies to avoid interference with private property rights. The respondents believe that such interference will arise from the Forest Service's plan to use the amendments to prohibit occupancy of NFS lands which they further expect will be implemented without meaningful administrative notice and opportunity for a hearing. They also point to the rule's supposed preclusion of the use of motorized mining equipment for small scale mining operations as another prohibited interference with their property rights. Finally, the commenters see such interference resulting from the Forest Service's asserted intention to require a bond for all small scale mining operations. The commenters further say that the violation of the E.O. also will constitute a violation of 5 U.S.C. 801(a)(1)(B)(iii) and (iv).

Response: Nothing in the proposed or final rule reflects a Forest Service intention, desire or policy to prohibit ''mining occupancy''. Nor does the rule address, or purport to address, bonding requirements for locatable mineral operations or the use of motorized equipment during such operations. Moreover, as discussed above, it is plain on the face of proposed and final Sec. 261.10(a), (b) and (p) that those prohibitions do not add to the regulatory requirements applicable to persons subject to 36 CFR part 228. Rather, the amendments to 36 CFR part 261, subpart A provide for criminal prosecution of miners who violate critical requirements governing mineral

operations set forth at 36 CFR part 228, subpart A. (In actuality, the amendments adopted by this rulemaking do not work to halt prohibited aspects locatable mineral operations. The amendments simply serve to deter persons from committing the prohibited acts, and to provide for the criminal enforcement of the prohibitions should deterrence fail.)

More fundamentally, the proposed amendments to 36 CFR part 261, subpart A can have no effect on any person conducting mining operations who complies with the requirements of 36 CFR part 228, subpart A. This fact itself disposes of the claim that the amendments to 36 CFR part 261, subpart A will take the property of miners because a person has no constitutionally protected right to commit illegal acts. Imposing criminal penalties for conducting illegal operations consequently does not take miners' property.

Comment: Four respondents provided a series of citations of the U.S. Code, along with narrative comments addressing rights granted under the United States mining laws. The comments center around the legality of the Forest Service proposing the regulatory clarifications as published in the **Federal Register** on May 10, 2007. The respondents state that the amendments ''*are prohibitive and not merely regulatory*'' and therefore are unlawful. The four respondents view the changes as an attempt to modify laws that Congress has enacted.

Response: The Forest Service has a clear and substantial responsibility to regulate the occupancy and use of NFS lands, including those lands used for activities conducted under the United States mining laws, as amended. The Forest Service fulfills this responsibility by working with prospectors and miners to comply with the locatable mineral regulations at 36 CFR part 228, subpart A. It follows that prospectors and miners who are not complying with the regulations and are conducting activities without authorization, when it has been determined that such authorization is needed, must be prevented from violating the locatable mineral regulations. As a result, the 36 CFR 261.10 ''Prohibitions'' define the occupancy and uses that are in deed, prohibited activities on NFS lands.

In the background discussion published in the **Federal Register** on May 10, 2007, it was explained that the Forest Service has two enforcement options, civil and criminal. The proposed regulatory clarification addresses only the criminal enforcement course of action. The regulation does not ''make miners criminals''; it is a legal course of action to enforce activities that fall within the locatable mineral regulations. In some cases, the Forest Service must initiate legal action to obtain compliance with the locatable mineral regulations.

As an example, if an operator intends to construct a permanent structure on NFS land in connection with some mining activity and the District Ranger determines this activity requires an approved plan of operation pursuant to 36 CFR 228.4(a), then the operator is ''prohibited'' from constructing such a structure until obtaining an approved Plan of Operation. If the operator began such unauthorized construction, the Forest Service, could issue the operator a criminal citation under the final rule for conducting a prohibited activity on NFS lands. Alternatively and depending on the facts of the case, the Forest Service could seek to obtain the operator's compliance through a civil procedure by bringing an enforcement case in civil court.

Comment: One person suggested that the amendments to 36 CFR part 261, subpart A, will discourage small operators from seeking approval of a plan of operations under 36 CFR part 228, subpart A. The individual identified the disincentive as he perceives it: An operator's admission that a plan of operations is required subjects the operator to the risk of fines and imprisonment if the operator simply runs a vehicle, generator, or other basic machinery before the Forest Service approves a plan of operations pursuant to 36 CFR 228.5, completely detailing permitted work.

Response: The regulations at 36 CFR part 228, subpart A specify when a plan of operation is necessary and describe the type of information that must be submitted to the District Ranger. The regulations at 36 CFR part 261, subpart A, do not address when a plan of operation is needed or what information the operator is required to submit.

Comment: Several respondents stated that they view the amendments to 36 CFR part 261, subpart A, under consideration as a Forest Service attempt to stymie multiple use of NFS lands by stopping mining.

Response: Under the Multiple-Use Sustained-Yield Act of 1960, renewable surface resources are to be managed as multiple uses. 16 U.S.C. 529. Mineral development is not a multiple use of NFS lands. 16 U.S.C. 528. But this does not mean development of minerals resources has no role on NFS lands. In 16 U.S.C. 528, Congress provided that ''[n]othing herein shall be construed so as to affect the use or administration of the mineral resources of national forest lands * * *''. Thus, the amendments to 36 CFR part 261, subpart A will have no effect on the Department's charge to administer NFS lands for multiple use.

Comment: Some respondents stated that use of criminal enforcement options was contrary to the Mining and Mineral Policy Act of 1970, which promoted terms later adopted as part of the Forest Service Minerals and Geology Program Policy of ''*fostering and encouraging the private development of the Nation's mineral wealth*''.

Response: It is a misunderstanding of the Mining and Minerals Policy Act of 1970 to conclude that enforcing the requirements of 36 CFR part 228, subpart A on NFS lands is contrary to the Act or the corresponding Forest Service policy. Having the option to criminally enforce 36 CFR part 228, subpart A when a miner fails or refuses to minimize the adverse environmental impacts of the miner's operations or when an operator is using NFS lands for purposes that are not reasonably incidental to appropriate locatable mineral prospecting, exploration, development, mining, processing, reclamation, or closure does nothing to ''foster and encourage'' responsible mineral development.

The Forest Service would shirk its statutorily assigned mandate to preserve National Forests if it countenanced non-compliant mineral operations under the guise of ''fostering and encouraging'' mineral development. As discussed above, the Act establishes that the nation is served by Forest Service regulation of mineral operations as provided for by 36 CFR part 228, and to enforce those regulations.

Comment: A respondent expressed the opinion that 36 CFR 261.10(p), should be revised to provide that some types of mineral related activities do not require either a special use authorization under 36 CFR part 251, subpart or an approved operating plan pursuant to 36 CFR part 228.

Response: The Department does not agree with this suggestion. As proposed, 36 CFR 261.10(p) prohibits ''[u]se or occupancy of National Forest System lands or facilities without an approved operating plan when such authorization is required.'' This language leaves no doubt that there are mineral operations for which an approved plan of operations is not required.

Nor does the Department agree that Sec. 261.10(p) needs to address the fact that mineral operations do not require a special use authorization. The inapplicability of the special uses regulations at 36 CFR part 251, subpart B, to mineral operations subject to 36

CFR part 228 is explicitly stated by 36 CFR 251.50(a). This issue is also discussed extensively in the preamble.

For this reason, no change was made in final Sec. 261.10(p) in response to this comment.

Comment: Where is ''significant surface disturbance'' defined?

Response: The term ''significant surface disturbance'' appears in final Sec. 261.10(a) among a listing of prohibited actions with respect to certain uses of NFS lands without an ''approved operating plan when such authorization is required. It refers to the ground disturbance resulting from a ''significant disturbance of NFS surface resources'' for purposes of 36 CFR part 228, subpart A.

Significant surface disturbance is a site-specific term and the responsibility for making the determination of what disturbances are likely to be ''significant'' to the environment belongs to the District Ranger. According to published response to public comments in the final rule dated June 6, 2005, the District Ranger uses past experience, direct evidence, or sound scientific projection to determine whether a proposed impact is likely to cause a significant surface disturbance.

Comment: Four respondents appear to read the proposed change as an outright prohibition on mine access or occupancy and conclude that the changes will materially interfere with existing rights to access under the United States mining laws.

Response: As discussed above, the amendments to 36 CFR part 261, subpart A being adopted by this rulemaking do not establish requirements governing mineral operations. The amendments merely provide an avenue for the Forest Service to use the criminal judicial process to bring mineral operations that are not in compliance with the requirements set forth in the applicable subpart of 36 Code part 228. Those regulations continue to provide the regulatory framework for operators to use and occupy NFS lands for mining purposes, and reasonably incidental uses while minimizing adverse environmental impacts (See 36 CFR 228.1 and 228.3(a)).

Comment: A mining district stated its interest pertains directly to how the amendments would be applied to mining operations and reasonably incidental uses of the NFS that normally do not require prior approval pursuant to 36 CFR 228.4(a). They note that these operations typically include *prospecting, small-scale mining, and suction dredge mining*.

Response: Proposed Sec. 261.10(a), (b) and (p) specifically prohibits conduct not provided for by an operating plan ''*when such authorization is required*.'' As discussed extensively above, operations not requiring an operating plan as that term is defined by Sec. 261.2 are not subject to 36 CFR part 261. Thus, the prohibitions in Sec. 261.10(a), (b), and (p) do not apply when an operator is conducting operations which do not require an operating plan.

For example, if an operator intends to conduct prospecting activities such as panning and hand-sluicing and, providing it is reasonably incidental, to camp on site for some period of time, then a Plan of Operations would not be required under 36 CFR 228.4 unless those operations are likely to cause significant disturbance of surface resources. If the level of locatable mineral prospecting, exploration, development, mining or processing, and reasonably incidental activities do not trigger the need for prior notice or prior approval under 36 CFR part 228, subpart A, then 36 CFR part 261, subpart A would not apply to those operations because they do not require an approved plan of operations.

Comment: A respondent claims Forest Service wishes to presume regulatory authority, in the form of requiring approved plans of operations, for all prospecting and/or small-scale mining activities and camping in connection with such activities that last longer than the undefined term ''temporary.''

Response: The proposed rule to amend 36 CFR part 261, subpart A sets forth prohibited acts whose commission by a person conducting mineral operations pursuant to 36 CFR part 228 may result in that person being charged with committing a misdemeanor. The prohibitions forbid specified acts without an ''approved operating plan when such authorization is required.'' However, the amendments do not specify any circumstance in or for which persons conducting mineral operations must obtain an approved operating plan. Rather, those circumstances requiring an approved operating plan are set forth in the subpart of 36 CFR part 228 applicable to the mineral operations in question. The sole function of the provisions in the amendments is to attach a consequence, a possible criminal sanction, to a person's failure to comply with 36 CFR part 228 provisions requiring that person to hold an approved operating plan. Thus, provisions in the subparts of 36 CFR part 228 create enforceable duties while provisions in the amendments authorize criminal enforcement for violating a few of those enforceable duties.

Comment: Respondents want to know how adoption of the proposed amendments will affect camping, or occupancy of NFS lands which does not represent conventional notions of residing on property, in connection with small-scale mining and prospecting activities.

Response: The scale of residence generally is not relevant to the application of 36 CFR part 261, subpart A. However, there is an exception insofar as residence involving permanent structures is concerned. Over time, the requirement that maintenance or other use of a permanent structure on NFS lands by an operator must be authorized by an approved plan of operations has been judicially recognized. Thus, even if occupancy of NFS lands involving a permanent structure is reasonably incidental to locatable mineral prospecting, exploration, development, mining or processing, it invariably requires a plan of operations. Thus, an operator's failure to obtain an approved plan of operations before conducting operations on NFS lands that will involve a permanent structure clearly would violate Sec. 261.10(b) because those operations clearly require prior submission and approval of a plan of operations. Any other form of camping or use of NFS lands for living or sleeping quarters will be analyzed in the manner discussed in detail in response to previous comments.

Comment: A few respondents seek an explanation for the presence of the terms ''temporary'' and ''permanent'' in proposed Sec. 261.2, the definition of ''residence.'' They express their belief that these terms reflect the Forest Service's obvious intent to require miners to obtain approval in order to camp on NFS lands in conjunction with locatable mineral operations for a period longer than the local stay limit. They also speculate that the Forest Service intends to prosecute criminally miners who camp for periods in excess of the stay limit without obtaining such approval.

Response: The primary reason for distinguishing residence on the basis of its permanence relates to United States efforts to combat attempted occupancy trespass on NFS lands under the color of the United States mining laws. By occupancy trespass, the Department refers to attempts to justify structures on NFS lands on the grounds that they are reasonably incidental to bona fide operations under the United States mining laws when their intended purpose is a weekend cabin, a summer

or hunting camp, and even full-time residences and the proposed operations are merely a ruse. Residential occupancy trespass is a pervasive problem on Federal lands. The magnitude of this and other abuses of the United States mining laws led to the enactment of the Surface Resources Act, as the BLM noted in the preamble for 43 CFR part 3710, subpart 3715.

''[B]y the 1950's it had become clear that widespread abuse of the general mining law was taking place. People were locating mining claims who either had no intention of mining or who never got around to it. Some of the uses taking place on unpatented claims included permanent residences, summer homes, townsites, orchards, farms, a nudist colony, restaurants, a rock museum, a real estate office, hunting and fishing lodges, filling stations, curio shops and tourist camps. To deal with this, Congress passed the Surface Resources Act of 1955 (69 Stat. 367, 30 U.S.C. 601–615), which included a provision that any unpatented mining claim may not be used for purposes other than prospecting, mining or processing operations and reasonably incident uses.'' (61 FR 37116 (July 16, 1996))

As noted in the previous response, the courts have recognized that an approved plan of operations is invariably required where operations will involve maintenance or other use of a permanent structure on NFS lands.

The Department should not be understood to suggest that actions involving a permanent structure can never be reasonably incident to bona fide locatable mineral operations. When intensive operations are proposed in a very remote area where there is no private land in reasonable proximity to a mining claim, an operator's construction and use of a permanent residence certainly could be reasonably incidental to the proposed mining. Nonetheless, even in this case, the Department considers requiring prior approval of permanent structures essential to discharging the Forest Service's duty to protect and preserve NFS lands given the magnitude and duration of the disturbance of surface resources usually associated with residential occupancy of NFS lands.

To the extent that respondents fear the Forest Service might cite an operator who is camping on NFS for the operator's failure to submit a notice of intent to operate when one is required, those fears are groundless. None of the prohibitions set forth in 36 CFR part 261, subpart A, including those adopted by this final rule, prohibit an action requiring a notice of intent to operate. Rather, the prohibitions applicable to occupancy of lands in conjunction with locatable mineral operations that require prior notice or approval apply when an operator acts ''without * * * an operating plan when such authorization is required.'' For purposes of 36 CFR part 228, subpart A, Sec. 261.2 defines the term ''operating plan'' to mean a plan of operations that has been approved. There is no prohibition applicable to acting without a notice of intent to operate when it is required by 36 CFR part 228, subpart A.

Absent extraordinary circumstances such as conducting operations on withdrawal lands or within areas of NFS lands or waters known to contain Federally listed threatened or endangered species or their designated critical habitats it would be very unusual for a plan of operations to be triggered simply because a miner proposes to occupy lands using a temporary shelter or structure. However, a plan of operations easily could be triggered by the cumulative effect of proposed locatable mineral prospecting, exploration, development, mining, or processing in combination with reasonably incidental occupancy of NFS lands using a temporary shelter or structure.

Note, however, it is the effects associated with the occupancy of NFS lands for living or sleeping quarters that determines the need for an approved plan of operations, not whether it exceeds the local stay limit. Of course, the duration of such occupancy could have a bearing on the effects of that occupancy. But the duration of such occupancy per se does not determine the need for an operator to submit a notice of intent to conduct operations or submit and obtain approval of a proposed plan of operations.

Moreover, nothing in the proposed or final definition of residence appearing in Sec. 261.2 nor in the proposed or final text of Sec. 261.10(a), (b) or (p) requires an operator to submit and obtain approval of a plan of operations to camp longer than permitted by a Forest Order. Nor is this rulemaking prompted by an intent to require mineral operators to comply with the camping limits published in the Forest Orders.

Pursuant to 36 CFR 228.4, an operator's need to submit a plan of operations arises when the operator reasonably expects or is uncertain whether the proposed operations, including reasonably incidental occupancy of NFS lands, is likely to cause significant surface disturbance. Alternatively, if the District Ranger determines that an operation is causing or is likely to cause significant disturbance of NFS surface resources, the district ranger can require an operator to submit and obtain approval of a plan of operations pursuant to 36 CFR 228.4(a)(4).

However, there is a more fundamental issue concerning the acceptability of occupancy of NFS lands for living or sleeping quarters: Whether that occupancy is reasonably incidental and necessary for the type, duration and stage of the proposed mining operations themselves. If locatable mineral prospecting, exploration, development, mining or processing is absent or not robust, that activity might not justify any, or more than limited, residency on site. If so, residence exceeding this level is not an operation for purposes of 36 CFR 228.3 which is authorized by the United States mining laws. In this circumstance, residence exceeding the reasonably incidental level constitutes a special use and is subject to the applicable stay limit.

Comment: One respondent suggests revising the definition of the term ''motorized equipment'' which appears in proposed Sec. 261.2. The respondent proposes defining the term as mining equipment able to move more than 20 yards of material per operational hour. The respondent also proposes that the definition note that suction dredges that move less than 20 yards of material are not mechanized earthmoving mining equipment.

Response: As discussed above, the final rule does not alter the definition of the term ''motorized equipment'' which currently appears in 36 CFR 261.2.

Comment: Several respondents who stated that their locatable mineral operations are recreational or a hobby, observed that most miners and prospectors respect the land and do not ''damage'' it.

Response: The Department agrees that most miners and prospectors respect the land and do not intend to affect surface resources adversely. Occasionally, miners and prospectors unintentionally cause such effects and are responsive when Forest Service employees seek changes in their mining practices. Unfortunately, some prospectors and miners who are adversely affecting surface resources refuse to work with the Forest Service to minimize those impacts. This rulemaking provides a means for the Department to enforce the requirements of 36 CFR part 228, subpart A, in situations where the Forest Service is unable to obtain the miner's willing compliance with those rules and excessive adverse environmental effects result. The proposed clarification to the regulation will address the criminal enforcement options available to the Forest Service to bring unauthorized occupancy and use into compliance with the locatable

mineral regulations. The proposed rule does not affect activities that are in compliance with the locatable mineral regulations.

Comment: Two respondents said that the Forest Service, in promulgating the proposed rule, violated E.O. 12866 by failing to make a required disclosure as to the effect of the rule on the Federal budget. Those respondents further stated that this violation of the E.O. also constitutes a violation of Congressional reporting requirements.

Response: The respondents did not cite the applicable provision of E.O. 12866 which they believe requires ''disclosures concerning whether the proposed rule represents a government action that would significantly effect the Federal budget'' and the E.O. does not use the term ''Federal budget'' or any obvious synonym. The only provision in the E.O. to which the respondents might be referring appears to be Sec. 6(a)(3)(C)(ii) which requires ''an assessment * * * of costs anticipated from the regulatory action (such as, but not limited to, the direct cost * * * to the government in administering the regulation * * *).'' However, such an assessment only is required ''for those matters identified as, or determined by the Administrator of OIRA to be, a significant regulatory action. * * *'' (Sec. 6(a)(3)(C)).

The Administrator of the Office of Information and Regulatory Affairs of the OMB found that the proposed rule for 36 CFR 261.10 was non-significant for purposes of E.O. 12866. Thus, the assessment mandated by Sec. 6(a)(3)(C)(ii) of the E.O. was not required for the proposed rule.

Given that the Forest Service did not violate E.O. 12866 in promulgating the proposed rule, there is no cumulative violation of Congressional reporting requirements.

Comment: A respondent asked how many serious problems really exist with mineral operators right now that cannot be managed with the civil remedies. The respondent also asks whether there would be an additional cost in relying upon the existing civil remedy, rather than a penal remedy which requires the United States to meet the burden of proving there is a violation of Sec. 261.10(a), (b) or (p) beyond a reasonable doubt.

Response: The respondent infers that only ''mineral operators'' are subject to the Part 261 prohibitions and this final rule. However, the prohibitions generally apply to all persons who use NFS lands. Practically speaking, the Department believes the amended prohibitions will have little or no effect on the large majority of legitimate locatable mineral operators who are complying with the requirements of both the United States mining laws and the regulations governing those operations set forth at 36 CFR part 228, subpart A. These conclusions are based upon the fact that the amendments to Sec. 261.10(a) and (b) prohibit specified actions without an ''approved operating plan when such authorization is required'' pursuant to 36 CFR part 228.

Comment: Respondents asserted that this rulemaking could not affect maintenance work on roads constructed before 1976 in accordance with 43 U.S.C. 932 (1938), which is commonly known as ''R.S. 2477'' and was repealed by Federal Land Policy and Management Act of 1976, § 704(a), 90 Stat. 2743, 2792 (1976).

Response: Given that work on R.S. 2477 roads is not an operation subject to 36 CFR part 228 and does not involve residence on National Forest System lands, this comment is beyond the scope of this rulemaking. For this reason, the rule was not changed in response to this comment.

Comment: A number of commenters asserted that as a matter of law, unauthorized occupancy does not exist if that occupancy occurs with mining operations, regardless of the type of mining operations, as long as a prudent prospector or miner requires that occupancy for the mining operations.

Response: The commenters' understanding of the law is incorrect. Occupancy of National Forest System lands is not analyzed in a vacuum. By definition, uses of National Forest System lands that are reasonably incidental to locatable mineral prospecting, exploration, development, mining or processing are a component of locatable mineral operations (36 CFR 228.3(a)). Assuming that proposed operations, including all reasonably incident uses, will likely cause a significant disturbance of surface resources, they must be authorized by an approved plan of operations before those operations commence (36 CFR 228.4(a)(2) through (a)(4)).

The United States Court of Appeals for the Ninth Circuit has consistently rejected miners' arguments that reasonably incidental uses of National Forest System lands are not subject to regulation by the Forest Service. *United States* v. *Doremus*, 888 F.2d 630, 633 n.2 (9th Cir. 1989), *cert. denied*, 498 U.S. 1046 (1991) was the first decision to do so. It was followed by *United States* v. *Campbell*, 42 F.3d 1199, 1203 (9th Cir. 1994) in which the Ninth Circuit held:

> In *United States* v. *Doremus*, 888 F.2d 630 (9th Cir. 1989), two miners cut timber on National Forest lands without an approved plan of operations. We upheld their convictions for damaging ''any natural feature or other property of the United States'' 36 CFR 261.9(a) (1987). We rejected the argument, raised by Campbell on this appeal, that in order to prosecute the government must first prove that the unauthorized logging was not ''reasonably incident'' to legitimate mining operations under 30 U.S.C. 612. Here, as in *Doremus*, ''[t]he flaw in appellant's argument is that 30 U.S.C. 612 does not authorize mining operators to act without Forest Service approval, and the operating plan did not authorize the cutting of live trees.'' *Id.* at 635.

Doremus was also cited with approval in *Clouser* v. *Espy*, 42 F.3d 1522, 1530 (9th Cir. 1994), *cert. denied sub nom. Clouser* v. *Glickman*, 515 U.S. 1141 (1995). ''In reaffirming the Forest Service's authority to regulate mining, the *Doremus* court rejected a miner's contention that conduct 'reasonably incident[al]' to mining could not be so regulated. *Doremus*, 888 F.2d at 632.'' *Id.*

For these reasons, no change has been made in the final rule in response to these comments.

Comment: Several respondents said the Department violated the Congressional Review Act, 5 U.S.C. 801(a)(1)(A), by failing to submit the proposed rule to amend 36 CFR part 261, subpart A to the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget for a determination as to whether the rule, if ultimately adopted, would be a major rule as defined by 5 U.S.C. 801(a)(1)(A)(i), 804(2). The commenter insists that the rule clearly would be a major rule for purposes of the Congressional Review Act because it would have an annual effect on the economy of $100,000,000 and meet other criteria in the Act's definition of the term ''major rule.'' 5 U.S.C. 804(2) The commenter also maintains the Department violated the Act by failing to submit required reports on the proposed rule to each House of Congress and the Comptroller General.

Response: The statute to which the respondent refers, 5 U.S.C. 801–808, is officially titled the Small Business Regulatory Enforcement Fairness Act of 1996 but often is referred to as the Congressional Review Act.

As discussed in response to a previous comment, before the proposed rule was published in the **Federal Register**, the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget reviewed the proposed rule and determined that it was not a significant rulemaking because it would not have an annual effect on the economy of at

least $100,000,000. Consequently, this rule as proposed and as adopted is not a major rule for purposes of 5 U.S.C. 801(a)(1)(A)(i), 804(2). When the final rule is published, reports will be sent to Congress and the GAO as required by SBA.

For these reasons, the Department has not violated the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801–808 in publishing the proposed rule or adopting the final rule.

Comment: Several respondents claimed that the proposed rule was vague and standardless.

Response: It is not our desire to produce a rule that is vague or standardless. The consequence is that the rule would not be enforceable. However, only the judicial branch of government can conclusively resolve the question of the proper interpretation of any rule or decide whether a rule is impermissibly vague.

Comment: One respondent faulted the Department for its failure to comply with the Administrative Procedure Act (APA), 5 U.S.C. 553(b), by giving public notice and providing an opportunity for comment before this Department ''implement[ed] the Proposed Rule * * *,'' that the respondent asserts is a substantive rule. The commenter said this Department's violation of the APA also violates the Small Business Regulatory Enforcement Fairness Act's requirements at 5 U.S.C. 801(a)(1)(B)(iii) and (iv).

Response: The Department agrees that the regulations under consideration in this rulemaking primarily are substantive rules for purposes of the APA, 5 U.S.C. 553(b). The Department also agrees this rulemaking is subject to 5 U.S.C. 553(b) and (c) because there is not good cause to find those procedures ''impracticable, unnecessary, or contrary to the public interest'' and the Department voluntarily partially waived the Act's notice and comment procedures for rulemakings such as the instant one involving ''public property.'' (36 FR 13804 (Jul. 24, 1971))

The proposed rulemaking complying with the Act's requirements to give ''[g]eneral notice of proposed rulemaking * * * published in the **Federal Register** including a statement of the ''nature of the public rule making proceedings; * * * the legal authority under which the rulemaking is proposed; and * * * the terms or substance of the proposed rule * * *'' (5 U.S.C. 553(b)) is the one published at 72 FR 26578–80 (May 10, 2007). The Department also complied with the Act's requirements to ''give interested persons an opportunity to participate in the rulemaking through submission of written data, views, or arguments'' (5 U.S.C. 553(c)) as evidenced by the respondent's comments. After considering all such comments, this Department is promulgating this final rule in accordance with 5 U.S.C. 553(c).

The respondent's uncertainty as to the nature of this rulemaking may stem from another rulemaking this Department undertook several years ago. There, the rulemaking was initiated by promulgation of an interim rule which took effect 30 days after its **Federal Register** publication (69 FR 41428) given the Department's conclusion that the earlier rulemaking was not subject to the APA's requirements for prior notice and opportunity for public comment (69 FR 41429). However, the current rulemaking, which is subject to those requirements, was initiated by publication of a proposed rule that has not taken effect (see 72 FR 26578–80).

For these reasons, neither the proposal or the adoption of the amendments to 36 CFR part 261, subpart A violated the APA or, cumulatively, 5 U.S.C. 801(a)(1)(B)(iii) and (iv).

Comment: One commenter said this rule is substantive because it will substantially change 36 CFR parts 228, 250 and 261. The commenter asserted that the Forest Service failed to acknowledge that this rule will effectively cancel or void 36 CFR part 228 and 36 CFR 251.50(a).

Response: The Department agrees that the rule is substantive and this point is discussed in more detail in the response to a comment concerning the applicability of the Administrative Procedure Act to the rule. Other comments also contain detailed explanations of the reasons why this rulemaking has not effect on 36 CFR part 228 and 36 CFR 251.50(a), 36 CFR part 228 and 36 CFR 251.50(a).

Comment: One respondent said the amendments to 36 CFR part 261, subpart A are tantamount to requiring a new and different collection of information in the form of either a notice of intent to conduct operations or a plan of operations from everyone conducting locatable mineral operations on NFS lands. Accordingly, the respondent believes that the Forest Service violated the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520, by failing to obtain OMB Control Numbers for these collections of information. The respondent asserts the violation's consequence is locatable mineral operators cannot be cited or penalized under 36 CFR part 261, subpart A rendering the amendments to 36 CFR part 261, subpart A and 36 CFR 228.4 unenforceable.

Two other respondents said it was possible that the Forest Service will violate the Paperwork Reduction Act if the agency has not obtained an OMB Control Number for the amended definition of the term ''operating plan'' to be set forth in 36 CFR 261.2 given that definition's inclusion of plans of operation required by 36 CFR 228.4.

Response: As previously noted, the amendments to 36 CFR part 261, subpart A do not alter the requirements applicable to persons conducting mineral operations on NFS lands pursuant to 36 CFR part 228. The function of the amendments is two-fold. They authorize criminal enforcement for selected serious violations of the regulations governing mineral operations, 36 CFR part 228. They also provide the public notice of actions prohibited on NFS lands whose commission can lead to the criminal prosecution of the person or an organization who violated a prohibition. No collection of information subject to the Paperwork Reduction Act is required by 36 CFR part 261, subpart A currently, or as it will be amended.

Moreover, the Paperwork Reduction Act specifically provides that it does ''not apply to the collection of information * * * during the conduct of a Federal criminal investigation or prosecution, or during the disposition of a particular criminal matter.'' 44 U.S.C. 3518(c)(1)(A). A citation issued by a Forest Service official pursuant to 36 CFR part 261, subpart A is the charging document which initiates a criminal prosecution, in accordance with FED. R. CRIM. P. 58. Consequently, even if the amendments were found to contain a collection of information, the Paperwork Reduction Act unquestionably would not govern those amendments given their function in criminal prosecutions.

For these reasons, in proposing, adopting and administering the amendments to 36 CFR part 261, subpart A, the Department did and will not violate Paperwork Reduction Act and the Act will not shield anyone who commits a prohibited act.

Comment: Commenters said the adoption of definition of the term ''operating plan,'' a catch-all term, in Sec. 261.2 coupled with the definition's inclusion of a plan of operations for purposes of 36 CFR part 228, subpart A violates the ''Right to Privacy Act'' and possibly the Paperwork Reduction Act.

Response: The respondent's comments concerning the Privacy Act and the Paperwork Reduction Act are too general to permit a detailed response. Neither statute is applicable to

this rulemaking. The Paperwork Reduction Act is discussed in more detail in response to a specific comment above.

Comment: Two respondents contend that the Forest Service's publication of the proposed rule violated Subchapter II of the Unfunded Mandates Reform Act of 1955, 2 U.S.C. 1531–38. They maintain the proposed rule would have an impact on the private sector of more than 100 million dollars per year triggering preparation of a statement required by 2 U.S.C. 1532, consultation with affected State, local and tribal governments pursuant to 2 U.S.C. 1534, and consideration of regulatory alternatives to the rule pursuant to 2 U.S.C. 1535. Those respondents further asserted that the Department, by violating the Unfunded Mandates Reform Act, in turn, violated 5 U.S.C. 801(a)(1)(B)(iii) and (iv).

Response: A written statement under 2 U.S.C. 1532 is required when an agency publishes a general notice of proposed rulemaking that is likely to include a Federal mandate that may cause expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any 1 year * * *'' The Act recognizes two types of ''federal mandates'' (2 U.S.C. 658(6)), a ''Federal intergovernmental mandate'' and a ''Federal private sector mandate'' as defined by 2 U.S.C. 658(5), 658(7), respectively.

The amendments do not create a Federal intergovernmental mandate for purposes of 2 U.S.C. 658(5) because they will not impose enforceable duties upon any State, local, or tribal government (2 U.S.C. 658(5)(A)(i)) and they do not relate to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority * * *'' (2 U.S.C. 658(5)(B)). Nor do the amendments create a Federal private sector mandate for purposes of 2 U.S.C. 658(7) because they will not impose enforceable duties upon anyone in the private sector (2 U.S.C. 658(7)(A)) and they do not ''reduce or eliminate the amount of authorization of appropriations for Federal financial assistance that will be provided to the private sector for the purposes of ensuring compliance with'' an enforceable duty the adopted regulation imposes on the private sector (2 U.S.C. 658(7)(B)). For these reasons, the amendments to 36 CFR part 261, subpart A do not contain a Federal mandate (2 U.S.C. 658(6)).

Consequently, the requirements to prepare a written statement and to seek input from elected officers of State, local, and tribal governments set forth at 2 U.S.C. 1532 and 1534, respectively, were not applicable because the proposed rulemaking was not likely to result in promulgation of any rule that includes a Federal mandate. In turn, the requirement set forth at 2 U.S.C. 1535 and to consider regulatory alternatives to the amendments to 36 CFR part 261, subpart A, was not applicable because it is dependent upon a written statement being required pursuant to 2 U.S.C. 1535(a).

For these reasons, in publishing the proposed rule, the Department did not violate the Unfunded Mandates Reform Act, or cumulatively violate 5 U.S.C. 801(a)(1)(B)(iii) and (iv).

Comment: Several respondents said that the Forest Service violated the National Environmental Policy Act (NEPA) by failing to prepare an environmental impact statement (EIS).

Response: The respondents' assertion that an EIS was required for the promulgation of the proposed rule is solely predicated upon the conclusion that the rule's promulgation was a major Federal action which, under NEPA, requires the preparation of an EIS. However, NEPA requires the preparation of an EIS only for those major Federal actions significantly affecting the quality of the human environment (42 U.S.C. 4332(2)(C)) and does not require an EIS for a major action which does not have a significant impact on the environment. *Sierra Club* v. *Hassell*, 636 F.2d 1095, 1097 (5th Cir. 1981); *Cf. Marsh* v. *Oregon Natural Resources Council*, 490 U.S. 360, 374 (1989).

The respondents do not identify or describe the significant environmental impacts they believe resulted from promulgation of the proposed rule. In fact, the proposed rule has no impact on the human environment. For these reasons, NEPA did not require the preparation of an EIS prior to the promulgation of the proposed rule. As noted below, this rule is categorically excluded from the requirements of additional NEPA documentation.

Comment: Several respondents stated the Forest Service violated NEPA by failing to use reliable methodology.

Response: The respondents did not explain why they believe that the Forest Service used unreliable methodology in promulgating the proposed rule. In fact, the totality of the respondents' description of this issue consists of the statement that ''[t]he Proposed rule fails to use reliable methodology in violation of NEPA and its implementing regulations.''

The Department's review of the proposed rule identified no instance where unreliable methodology was used in the rule's promulgation.

Comment: Several respondents said that the Forest Service violated NEPA by failing to conduct scoping on the rule.

Response: Scoping is the process by which the agency determines what, if any, environmental issues are presented by a proposed action and how best to involve the public in that process. Here, the agency has given public notice of the proposed rule and received comments from the public on all aspects of the proposal. In such cases, the scoping function is conducted through the rulemaking process.

Comment: Two respondents commented that the Forest Service failed to solicit comment on the proposed rule from Western Governors which violates the spirit of the 1998 Department of the Interior and Related Agencies Appropriations Act, Public Law 105–83, § 339, 111 Stat. 1543, 1602 (1997).

Response: The cited provision of the 1998 Department of the Interior and Related Agencies Appropriations Act does not apply to this rulemaking. All interested parties have had an equal opportunity to submit comments. State and local governments regularly monitor proposed rules promulgated by the Forest Service and frequently submit comments when they believe it serves their interests.

Comment: Numerous respondents said that the proposed rule unfairly restricts entities or persons, whom the respondents characterized as mining clubs, recreational miners, hobby miners, and recreational suction dredgers. Some of the respondents also commented that the proposed rule could collapse the recreational mining industry. Other respondents said that United States mining laws authorize recreational and hobby mining.

Response: The respondents did not describe how the proposed rule would have such a drastic effect on their groups. Consequently, a specific response to this comment cannot be provided.

Nonetheless, the Organic Administration Act (16 U.S.C. 482) reapplied the United States mining laws (30 U.S.C. 22 *et seq.*) to Forest Service lands reserved from the public domain pursuant to the Creative Act of 1891 (§ 24, 26 Stat. 1095, 1103 (1891), *repealed by* Federal Land Policy and Management Act of 1976, § 704(a), 90 Stat., 2743, 2792 (1976)). Under the United States mining laws, United States citizens may enter such reserved NFS lands to prospect or explore for and remove valuable deposits of certain

minerals referred to as locatable minerals. However, no distinction between persons conducting locatable mineral operations primarily for ''recreational'' versus ''commercial'' purposes nor a difference between the requirements applicable to operations conducted for these purposes is recognized by the United States mining laws, the Organic Administration Act, 36 CFR part 228, subpart A or 36 CFR part 261, subpart A. Thus, to the extent that individuals or members of mining clubs are prospecting for or mining valuable deposits of locatable minerals, and making use of or occupying Forest Service lands for functions, work or activities which are reasonably incidental to such prospecting and mining, it does not matter whether those operations are described as ''recreational'' or ''commercial.''

One thing which often is unique insofar as functions, work, or activities are proposed by individuals, members of mining clubs, or mining clubs themselves whose interest in locatable mineral operations is primarily recreational, is that they far exceed the scope of the United States mining laws. Such functions, work, or activities that are not authorized by the United States mining laws include educational seminars, treasure hunts, and use of mining claims as sites for hunting camps or summer homes. Accordingly, a major impetus for this rulemaking culminating in the final rule being adopted is to prohibit operations conducted under the color of the mining laws that clearly are not within the scope of bona fide operations consistent with the United States mining laws. Thus, the final rule being adopted by this rulemaking applies to every person or entity conducting or proposing to conduct locatable mineral operations on Forest Service lands under the United States mining laws.

For these reasons, no change has been made in the final rule as a result of these comments.

Comment: One commenter asserted that adoption of Sec. 261.10(a), (b) and (p) would amount to a *de facto* withdrawal of National Forest System lands from the operation of the United States mining laws. The individual asserted the *de facto* withdrawal would be the consequence of the proposed rule's taking of all mining claims located on National Forest System lands.

Response: As discussed above, the amendments to 36 CFR part 261, subpart A being adopted will not substantively alter the requirements governing locatable mineral operations on NFS lands. Those requirements are set forth at 36 CFR part 228, subpart A, and in some circumstances other parts of Title 36 of the Code of Federal Regulations, not in 36 CFR part 261, subpart A. The amendments solely provide for the imposition of a penalty, in the nature of a fine, incarceration, or both, for a miner's failure to comply with requirements applicable to operator's operations by virtue of 36 CFR part 228, subpart A. Accordingly, adoption of the rule will not affect a taking of a miner's property.

The commenter's assertions concerning the purported withdrawal also are inherently inconsistent. The respondent concluded the comment on this issue by contending that the withdrawal would be void *ab initio* given that it would not comply with the procedures specified by the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714.

Comment: One respondent claimed that hearings are required prior to revocation of state permits. He claimed that the proposed rule would revoke his California permit without good cause.

Response: The rule does not authorize or effect the revocation of any state permit.

Comment: Several respondents commented that the proposed rule is inconsistent with a National Research Council report entitled ''Hardrock Mining on Federal Lands.''

Response: The comments did not identify or describe in any manner inconsistencies between the proposed rule and the National Research Council report, whose main body is 126 pages in length. The respondents' comments only addressed the BLM's 3809 regulations, not the proposed Forest Service rule. For these reasons, no change has been made in the final rule as a result of these comments.

Regulatory Certifications

Regulatory Impact

This proposed rule has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. It has been determined that this final rule is not significant. It will not have an annual effect of $100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor State or local governments. This proposed rule would not interfere with an action taken or planned by another agency nor raise new legal or policy issues. Finally, this action will not alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients of such programs.

Moreover, this proposed rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and it has been determined that this action will not have a significant economic impact on a substantial number of small entities as defined by that Act. Therefore, a regulatory flexibility analysis is not required.

Environmental Impacts

This proposed rule more clearly establishes when mineral operators can be issued a criminal citation for unauthorized occupancy and use of National Forest System lands and facilities when such authorization is required. Section 31.1(b) of Forest Service Handbook 1909.15 (57 FR 43168; September 18, 1992) excludes from documentation in an environmental assessment or environmental impact statement ''rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions.'' This proposed rule falls within this category of actions and no extraordinary circumstances exist which would require preparation of an environmental assessment or an environmental impact statement.

Moreover, this rule itself has no impact on the human environment. It requires mineral operations to be conducted in compliance critical provisions of the applicable subpart of 36 CFR part 228, and any operating plan governing such operations. Additionally, the rule provides that an operator's violation of the prohibitions can be enforced criminally. These functions do not have environmental consequences. Actions with the potential to have environmental consequences are those provided for by the applicable subpart of 36 CFR part 228. Therefore, the adoption of this final rule does not require preparation of an environmental assessment or an environmental impact statement.

Energy Effects

This proposed rule has been reviewed under Executive Order 13211 of May 18, 2001, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.'' It has been determined that this proposed rule does not constitute a significant energy action as defined in the Executive Order.

Controlling Paperwork Burdens on the Public

This proposed rule does not contain any new recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 that are not already

required by law or not already approved for use. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply.

Federalism

The agency has considered this proposed rule under the requirements of Executive Order 13132, Federalism, and Executive Order 12875, Government Partnerships. The agency has completed an assessment finding that the final rule conforms with the federalism principles set out in these Executive orders; would not impose any compliance costs on the States; and would 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.

Consultation and Coordination With Indian Tribal Governments

This proposed rule does not have tribal implications as defined by Executive Order 13175, Consultation and Coordination with Indian Tribal Governments; therefore, consultation with tribes is not required.

No Takings Implications

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630—Government Actions and Interference with Civil Constitutionally Protected Property Rights. It has been determined that the proposed rule does not pose the risk of a taking of private property.

Civil Justice Reform

This proposed rule has been reviewed under Executive Order 12988—Civil Justice Reform. Pursuant to this final rule, (1) all State and local laws and regulations that are in conflict with the rule or that impede its full implementation are preempted; (2) no retroactive effect is given to the rule; and (3) the rule does not require administrative proceedings before parties may file suit in court to challenge its provisions.

Unfunded Mandates

Pursuant to title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), which the President signed into law on March 22, 1995, the Forest Service has assessed the effects of this proposed rule on State, local, and tribal governments and the private sector. This proposed rule would not compel the expenditure of $100 million or more by any State, local, or tribal government or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

List of Subjects in 36 CFR Part 261

Law enforcement, Mines, National Forests.

■ Therefore, for the reasons set forth in the preamble, amend subpart A of part 261 of Title 36 of the Code of Federal Regulations as follows:

PART 261—PROHIBITIONS

■ 1. The authority citation for part 261 continues to read as follows:

Authority: 7 U.S.C. 1011(f); 16 U.S.C. 472, 551, 620(f), 1133(c), (d)(1), 1246(i).

Subpart A—General Prohibitions

■ 2. Amend § 261.2 by revising the definition for *operating plan,* and adding a definition for *residence* to read as follows:

§ 261.2 Definitions.

* * * * *

Operating plan means the following documents, providing that the document has been issued or approved by the Forest Service: A plan of operations as provided for in 36 CFR part 228, subparts A and D, and 36 CFR part 292, subparts C and G; a supplemental plan of operations as provided for in 36 CFR part 228, subpart A, and 36 CFR part 292, subpart G; an operating plan as provided for in 36 CFR part 228, subpart C, and 36 CFR part 292, subpart G; an amended operating plan and a reclamation plan as provided for in 36 CFR part 292, subpart G; a surface use plan of operations as provided for in 36 CFR part 228, subpart E; a supplemental surface use plan of operations as provided for in 36 CFR part 228, subpart E; a permit as provided for in 36 CFR 251.15; and an operating plan and a letter of authorization as provided for in 36 CFR part 292, subpart D.

* * * * *

Residence. Any structure or shelter, whether temporary or permanent, including, but not limited to, buildings, buses, cabins, campers, houses, lean-tos, mills, mobile homes, motor homes, pole barns, recreational vehicles, sheds, shops, tents and trailers, which is being used, capable of being used, or designed to be used, in whole or in part, full or part-time, as living or sleeping quarters by any person, including a guard or watchman.

* * * * *

■ 3. Amend § 261.10 by revising paragraphs (a) and (b) and adding paragraph (p) to read as follows:

§ 261.10 Occupancy and use.

* * * * *

(a) Constructing, placing, or maintaining any kind of road, trail, structure, fence, enclosure, communication equipment, significant surface disturbance, or other improvement on National Forest System lands or facilities without a special-use authorization, contract, or approved operating plan when such authorization is required.

(b) Construction, reconstructing, improving, maintaining, occupying or using a residence on National Forest System lands unless authorized by a special-use authorization or approved operating plan when such authorization is required.

* * * * *

(p) Use or occupancy of National Forest System lands or facilities without an approved operating plan when such authorization is required.

Dated: October 31, 2008.

Mark Rey,

Under Secretary, Natural Resources and Environment.

[FR Doc. E8–26448 Filed 11–5–08; 8:45 am]

BILLING CODE 3410–11–P

Proposed Rules

Federal Register

Vol. 73, No. 216

Thursday, November 6, 2008

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

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM–50–75; NRC–2002–0018]

Anthony R. Pietrangelo, Nuclear Energy Institute; Consideration of Petition in the Rulemaking Process

AGENCY: Nuclear Regulatory Commission.

ACTION: Resolution and closure of petition docket.

SUMMARY: The Nuclear Regulatory Commission (NRC) is considering the issues raised in a petition for rulemaking submitted by Anthony R. Pietrangelo, on behalf of the Nuclear Energy Institute, in the ongoing ''Risk-Informed Redefinition of Large Break Loss-of-Coolant Accident (LOCA) Emergency Core Cooling System (ECCS) Requirements'' rulemaking. The petitioner requested that the NRC amend its regulations to allow the use of an alternative to the currently required double-ended rupture of the largest pipe in the reactor coolant system in ECCS evaluation models.

DATES: The docket for the petition for rulemaking PRM–50–75 is closed on November 6, 2008.

ADDRESSES: You can access publicly available documents related to this petition for rulemaking using the following methods:

Federal e-Rulemaking Portal: Further NRC action on the issues raised by this petition will be accessible at the federal rulemaking portal, *http://www.regulations.gov*, by searching on rulemaking docket ID: NRC–2002–0018 and docket ID: NRC–2008–0332. The NRC also tracks all rulemaking actions in the ''NRC Regulatory Agenda: Semiannual Report (NUREG–0936).''

NRC's Public Document Room (PDR): The public may examine and have copied for a fee, publicly available documents at the NRC's PDR, Public File Area O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Document Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/NRC/reading-rm/adams.html*. From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are any problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *PDR.resource@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Lynn M. Hall, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone: 301–415–3759, or toll-free: 800–368–5642, e-mail: *Lynn.Hall@nrc.gov*

SUPPLEMENTARY INFORMATION: On April 8, 2002 (67 FR 16654), the NRC published for public comment a petition for rulemaking (PRM) filed by Anthony R. Pietrangelo, on behalf of the Nuclear Energy Institute. The comment period closed on June 24, 2002, and the NRC received eighteen comment letters ML082460625. The NRC has determined that the issues raised in PRM–50–75 are appropriate for consideration and, in fact, the issues are already being considered in the ongoing ''Risk-Informed Redefinition of Large Break LOCA ECCS Requirements'' rulemaking. This proposed rule was published on April 8, 2005 (67 FR 16654), and a report on ''Seismic Considerations for the Transition Break Size'' was published for public comment on December 20, 2005 (70 FR 75501). The comment periods for both the proposed rule and the report expired on February 6, 2006. The NRC will address substantive comments filed in PRM–50–75 as part of the ''Risk-Informed Redefinition of Large Break LOCA ECCS Requirements'' rulemaking.

Dated at Rockville, Maryland, this 15th day of October 2008.

For the Nuclear Regulatory Commission.

Bruce S. Mallett,

Acting Executive Director for Operations.

[FR Doc. E8–26463 Filed 11–5–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM–50–71; NRC–2000–0004]

Petition for Rulemaking Filed by David J. Modeen, Nuclear Energy Institute; Consideration of Petition in the Rulemaking Process

AGENCY: Nuclear Regulatory Commission.

ACTION: Resolution and closure of petition docket.

SUMMARY: The Nuclear Regulatory Commission (NRC) is considering the issues raised in a petition for rulemaking submitted by David J. Modeen, on behalf of the Nuclear Energy Institute, in the ongoing ''Performance-Based Emergency Core Cooling System (ECCS) Cladding Acceptance Criteria'' rulemaking (ADAMS accession no. ML020630082). The petitioner requested that the NRC amend its regulations to allow nuclear power plant licensees to use zirconium-based cladding materials other than Zircaloy or ZIRLO, provided the cladding materials meet the requirements for fuel cladding performance and have been approved by the NRC staff. Specifically, the petitioner stated that the NRC's current regulations require uranium oxide fuel pellets, used in commercial reactor fuel, to be contained in cladding material made of Zircaloy or ZIRLO. The requirement to use either of these materials is stated in the regulations that govern combustible gas control and acceptance criteria for emergency core cooling systems for nuclear power reactors. The petitioner noted that subsequent to promulgation of these regulations, commercial nuclear fuel vendors have developed and continue to develop materials other than Zircaloy or ZIRLO. To allow a licensee to use fuel made with these new cladding alloys, the NRC must review and approve an exemption request. The petitioner requested that the NRC amend these regulations to allow licensees discretion to use zirconium-based cladding materials other than Zircaloy or ZIRLO, provided that the cladding materials meet the fuel cladding performance requirements and have been reviewed and approved by the NRC staff.

DATES: The docket for the petition for rulemaking PRM–50–71 is closed on November 6, 2008.

ADDRESSES: You can access publicly available documents related to this petition for rulemaking using the following methods:

Federal e-Rulemaking Portal: Further NRC action on the issues raised by this petition will be accessible at the federal rulemaking portal, *http://www.regulations.gov*, by searching on rulemaking docket ID: NRC–2000–0004 and docket ID: NRC–2008–0332. The NRC also tracks all rulemaking actions in the ''NRC Regulatory Agenda: Semiannual Report (NUREG–0936).''

NRC's Public Document Room (PDR): The public may examine and have copied for a fee, publicly available documents at the NRC's PDR, Public File Area O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Document Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/NRC/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are any problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *PDR.resource@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Lynn M. Hall, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone: 301–415–3759, or toll-free: 800–368–5642, e-mail: *Lynn.Hall@nrc.gov.*

SUPPLEMENTARY INFORMATION: On May 31, 2000 (65 FR 34599), the NRC published for public comment a petition for rulemaking (PRM) filed by David J. Modeen, on behalf of the Nuclear Energy Institute. The comment period closed on August 14, 2000, and the NRC received 11 comment letters. In response to this petition, the NRC amended § 50.44 of its regulations (68 FR 54123, September 16, 2003) to eliminate the requirement to use Zircaloy or ZIRLO cladding. With respect to the cladding requirements specified in § 50.46, the NRC has determined that the petitioner's request in PRM–50–71 is appropriate for consideration and, in fact, is already being considered in the ongoing ''Performance-Based Emergency Core Cooling System (ECCS) Cladding Acceptance Criteria'' rulemaking. This rulemaking proposes revisions to the NRC regulations in 10 CFR Part 50 that addresses licensing of production and utilization facilities in which the remaining open issues from PRM–50–71 will be resolved. The NRC will address the comments filed in PRM–50–71 as part of this rulemaking.

Dated at Rockville, Maryland, this 9th day of October 2008.

For the Nuclear Regulatory Commission.

R.W. Borchardt,

Executive Director for Operations.

[FR Doc. E8–26459 Filed 11–5–08; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–146895–05]

RIN 1545–BF05

Election To Expense Certain Refineries; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document cancels a public hearing on proposed rulemaking by cross-reference to temporary regulations under section 179C of the Internal Revenue Code relating to the election to expense qualified refinery property.

DATES: The public hearing, originally scheduled for November 20, 2008 at 10 a.m. is cancelled.

FOR FURTHER INFORMATION CONTACT: Funmi Taylor of the Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration) at (202) 622–3628 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking by cross-reference to temporary regulations and a notice of public hearing that appeared in the **Federal Register** on Wednesday, July 9, 2008 (73 FR 39270) announced that a public hearing was scheduled for November 20, 2008, at 10 a.m. in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is under the section 179C of the Internal Revenue Code.

The public comment period for these regulations expired on September 8, 2008. The notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing instructed those interested in testifying at the public hearing to submit an outline of the topics to be addressed by October 14, 2008. As of Monday, October 27, 2008, no one has requested to speak. Therefore, the public hearing scheduled for November 20, 2008, is cancelled.

Guy Traynor,

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

[FR Doc. E8–26426 Filed 11–5–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2008–0049]

Drawbridge Operation Regulations; Gulf Intracoastal Waterway (GIWW), Mile 49.8, Near Houma, Lafourche Parish, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking; withdrawal.

SUMMARY: The Coast Guard is withdrawing its notice of proposed rulemaking concerning the operation of the SR 316 Blue Bayou Pontoon Bridge across the GIWW, mile 49.8, near Houma, Lafourche Parish, Louisiana. The notice of proposed rulemaking proposed to allow the bridge to stay closed for school buses to pass when carrying children, but due to mechanical improvements of the bridge, the requester, Lafourche Parish Council, has withdrawn their request.

DATES: The notice of proposed rulemaking is withdrawn on November 6, 2008.

ADDRESSES: The docket for this withdrawn rulemaking is available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room 212–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on the proposed rule

or the withdrawal, call Bart Marcules, Bridge Administration Branch, telephone (504) 671–2128. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Background

On March 12, 2008, we published a notice of proposed rulemaking entitled ''Drawbridge Operation Regulations; Gulf Intracoastal Waterway (GIWW), mile 49.8, near Houma, Lafourche Parish, LA'' in the **Federal Register** (73 FR 13160). The rulemaking concerned a change to the regulation governing the operation of the SR 316 Blue Bayou Pontoon Bridge across the GIWW, mile 49.8, near Houma, Lafourche Parish, Louisiana. The bridge opens on signal, but due to high vehicular traffic and school bus traffic, Lafourche Parish requested a change. The proposed rule would have required the draw of the bridge to open on signal, except from 7 a.m. to 8:30 a.m., 4 p.m., and from 4:30 p.m. to 5:30 p.m. during the regular school year on Monday through Friday except Federal holidays.

Withdrawal

Due to mechanical improvements of the bridge and no new complaints since the mechanical improvements, the requester, Lafourche Parish Council, has withdrawn their request. Also, one comment to the Notice of Proposed Rulemaking stated that improved mechanical operations of the bridge could help this situation. The mechanical improvements have made closing the bridge a quicker process, alleviating the extensive vehicular backlog created by the opening and closing of the bridge.

Authority: This action is taken under the authority of 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

Dated: October 23, 2008.

J.R. Whitehead,

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

[FR Doc. E8–26525 Filed 11–5–08; 8:45 am]

BILLING CODE 4910–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 08–1502; MB Docket No. 08–101; RM–11438]

Television Broadcasting Services; Ann Arbor, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a channel substitution proposed by Paxson Communications License Company, LLC (''Paxson''), the permittee of WPXD–DT, post-transition DTV channel 31, Ann Arbor, Michigan. Paxson requests the substitution of DTV channel 19 for post-transition DTV channel 31 at Ann Arbor.

DATES: Comments must be filed on or before December 8, 2008, and reply comments on or before December 22, 2008.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: Scott S. Patrick, Esq., Dow Lohnes, PLLC, 1200 New Hampshire Avenue, NW., Suite 800, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Shaun A. Maher, *shaun.maher@fcc.gov*, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 08–101, adopted October 10, 2008, and released October 15, 2008. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., 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.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail *http://www.BCPIWEB.com*. 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). This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.622 [Amended]

2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Michigan, is amended by adding DTV channel 19 and removing DTV channel 31 at Ann Arbor.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E8–26509 Filed 11–5–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 08–2116; MB Docket No. 08–193; RM–11489]

Television Broadcasting Services; Hayes Center, NE

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a channel substitution proposed by Pappas Telecasting of Central Nebraska, L.P. (''Pappas''), the permittee of KWNB–DT, DTV channel 18, Hayes Center, Nebraska. Pappas requests the substitution of DTV channel 6 for channel 18 at Hayes Center.

DATES: Comments must be filed on or before December 8, 2008, and reply comments on or before December 22, 2008.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: Kathleen Victory, Esq., Fletcher, Heald & Hildreth, PLC, 1300 North 17th Street, 11th Floor, Arlington, VA 22209.

FOR FURTHER INFORMATION CONTACT: Joyce L. Bernstein, *joyce.bernstein@fcc.gov*, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 08–193, adopted September 12, 2008, and released September 19, 2008. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., 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.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail *http://www.BCPIWEB.com*. 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). This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.622 [Amended]

2. Section 73.622(i), the DTV Table of Allotments under Nebraska, is amended by adding channel 6 and removing channel 18 at Hayes Center.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E8–26507 Filed 11–5–08; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS R2 ES 2008 0114; 92220–1113–0000; C5]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To Delist Cirsium vinaceum (Sacramento Mountains Thistle)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding and initiation of a status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to remove the threatened *Cirsium vinaceum* (Sacramento Mountains thistle) from the Federal List of Threatened and Endangered Plants, under the Endangered Species Act of 1973, as amended (Act). We find that the petition presents substantial information indicating that delisting of *C. vinaceum* may be warranted. Therefore, with the publication of this notice, we are initiating a 12-month status review in response to this petition under section 4(b)(3)(B) of the Act to determine if delisting the species is warranted. To ensure that the review is comprehensive, we are soliciting data and other information regarding *C. vinaceum.*

DATES: To allow us adequate time to conduct a status review, we request that information be submitted on or before December 22, 2008.

ADDRESSES: You may submit information by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: [FWS–R2–ES–2008–0114; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all information received on: *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Information Solicited section below for more details).

FOR FURTHER INFORMATION CONTACT: Wally ''J'' Murphy, Field Supervisor, U.S. Fish and Wildlife Service, New Mexico Ecological Services Office, 2105 Osuna Road, NE, Albuquerque, New Mexico 87113; telephone 505–346–2525; facsimile 505–346–2542. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Information Solicited

When we make a finding that substantial information exists to indicate that listing or delisting a species may be warranted, we are required to promptly commence a review of the status of the species. To ensure that the status review is complete and based on the best available scientific and commercial information, we are soliciting any additional information on the status of *Cirsium vinaceum* from the public, other concerned governmental agencies, Native American Tribes, the scientific community, industry or environmental entities, or any other interested parties.

We are seeking information on historical and current distribution, biology and ecology, ongoing conservation measures for the species or its habitat, and threats to the species or its habitat. We also request information regarding the adequacy of existing regulatory mechanisms.

Please note that comments merely stating support or opposition to the actions under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is a threatened or endangered species shall be made ''solely on the basis of the best scientific and commercial data available.'' At the conclusion of the status review, we will issue the 12-month finding on the petition, as provided in section 4(b)(3)(B) of the Act (16 U.S.C. 1531 *et seq.*).

You may submit your information concerning this finding by one of the methods listed in the **ADDRESSES** section. We will not consider submissions sent by e-mail or fax or to an address not listed in the **ADDRESSES** section.

If you submit information via *http://www.regulations.gov*, your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.*

Information and materials we receive, as well as supporting documentation we used in preparing this finding, will be available for public inspection on *http://www.regulations.gov*, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, New Mexico Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

Section 4(b)(3)(A) of the Act (16 U.S.C. 1531 *et seq.*) requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. Such findings are based on information contained in the petition, supporting information submitted with the petition, and information otherwise available in our files at the time we make the finding. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition, and publish our notice of this finding promptly in the **Federal Register**.

Our 90-day finding under section 4(b)(3)(A) of the Act and § 424.14(b) of our regulations is limited to a determination of whether the information in the petition meets the ''substantial information'' threshold. ''Substantial information'' is defined in 50 CFR 424.14(b) as ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted.'' If we find that substantial information was presented, we are required to promptly commence a status review of the species.

We evaluated the information provided by the petitioner in accordance with 50 CFR 424.14(b). Our process for making this 90-day finding under section 4(b)(3)(A) of the Act and 50 CFR 424.14(b) of our regulations is limited to a determination of whether the information in the petition meets the ''substantial scientific and commercial information'' threshold (as mentioned above).

Species Information

Cirsium vinaceum is a stout plant, 3.3 to 5.9 feet (ft) (1 to 1.8 meters (m)) tall. *Cirsium vinaceum* stems are brown-purple and highly branched. The basal leaves are green, 12 to 20 inches (in) (30 to 50 centimeters (cm)) long, and up to 8 in (20 cm) wide, with ragged edges. *Cirsium vinaceum* is a short-lived perennial. It lives as a rosette (a circular arrangement of leaves close to the ground) for one or more years, and eventually a stem bolts upward producing flower and seed. Flowering, the vehicle for sexual reproduction, occurs only once, from July through September, when pink-purple flower heads form at the tips of stems. At any given time, flowering adults comprise approximately 10 percent of the total number of plants (USFS 2003). Seed production usually occurs from cross-pollination by native bees, flies, butterflies, and hummingbirds, although pollination from another plant is not always required for reproduction. Adult *C. vinaceum* plants die after flowering. *Cirsium vinaceum* is an obligate wetland species that requires saturated soils with surface or sub-surface water flow. Waters at these sites are rich in calcium carbonate from limestone sources that often precipitates out to create large areas of travertine (calcium carbonate) deposits, which occasionally become large bluffs or hills. Travertine deposits are the most common habitat of the species.

Cirsium vinaceum presently occurs on both the eastern and western slopes of the Sacramento Mountains in south-central New Mexico. The species is found primarily on National Forest Service lands of the Lincoln National Forest in Otero County, New Mexico (Service 1993, p. 3). A few occupied sites lie on the extreme southern end of the Mescalero Apache Indian Reservation and a few private land inholdings within the Lincoln National Forest (Service 1993, p. 3). Within this known range, *C. vinaceum* grows in the mixed-conifer zone, between 7,500 and 9,500 ft (2,300 and 2,900 m), in limestone substrate.

Cirsium vinaceum was listed as a threatened species on June 16, 1987, based on threats from water development, trampling and ground disturbance by livestock, recreation, logging, and the invasion of exotic plants (52 FR 22933). At the time of listing, it was known from 20 localities consisting of a total of 10,000 to 15,000 sexually reproducing plants (52 FR 22933). This number of plants was greater than the 2,000 to 3,000 sexually reproducing plants known at the time the species was proposed for listing in 1984 (49 FR 20735). A recovery plan for *C. vinaceum* was finalized on September 27, 1993 (Service 1993, pp. 1–23). Critical habitat has not been designated for this species.

Review of the Petition

On August 13, 2007, we received a petition from the Board of County Commissioners of Otero County, New Mexico, to delist *Cirsium vinaceum.* The petitioner cites the following documents pertaining to *C. vinaceum:* A 1984 proposal to determine *C. vinaceum* to be a threatened species and to determine critical habitat (49 FR 20735, May 16, 1984); the June 16, 1987 final rule to determine *C. vinaceum* to be a threatened species (52 FR 22933); the 1993 Sacramento Mountains Thistle (*Cirsium vinaceum*) Recovery Plan; the 2004 original petition to delist the Sacramento Mountains thistle submitted by Otero County Commissioner Doug Moore; the 2004 Final Environmental Impact Statement—Sacramento, Dry Canyon, and Davis Grazing Allotments (Forest Service 2004); the 2005 Programmatic Biological and Conference Opinion: the Continued Implementation of the Land and Resource Management Plans (LRMP) for the Eleven National Forests and National Grasslands of the Southwestern Region (LRMP Biological Opinion) (USFWS 2005); the 2006 90-

day finding on a petition to delist the Sacramento Mountains thistle (*Cirsium vinaceum*) and initiation of a 5-year status review (71 FR 70479, December 5, 2006); the USDA Natural Resources Conservation Service web report, ''New Mexico County Level Distribution for *Cirsium vinaceum*'' (web-checked by petitioner February, 2007); and a U.S. Forest Service (Forest Service) Draft Map of Known Locations of Sacramento Mountains Thistle (*Cirsium vinaceum*), Sacramento Ranger District, Lincoln National Forest (undated). The petitioner clearly identifies the petition as a petition and includes the requisite information for the petitioner, as required in 50 CFR 424.14(a).

The petitioner summarizes the natural history of *Cirsium vinaceum*, describes the range and population status from 1984 to 2003, and outlines the regulatory history.The petitioner emphasizes that *C. vinaceum* numbers have increased dramatically since the original listing and believes that the recovery objectives have been satisfied. Comparisons of occupied localities and population numbers are drawn from the 1984 petition to list *C. vinaceum* (49 FR 20735, May 16, 1984), the June 16, 1987 final rule to list *C. vinaceum* as threatened (52 FR 22933), the 1993 recovery plan for *C. vinaceum*, and the 2006 90-day finding on a petition to delist *C. vinaceum* (71 FR 70479, December 5, 2006). These documents give the locality and population numbers as: 14 localities with 2,000 to 3,000 total individuals in 1984; 20 localities with a total of 10,000 to 15,000 reproductive individuals in 1987; 62 localities with 49,000 total plants in 1993; and 86 localities with an estimated 350,000 to 400,000 total *C. vinaceum* plants in 2003. Population data after 2003 are not included in the petition. The petitioner also discusses possibilities of the range of *C. vinaceum* extending northward into Lincoln County as suggested by a National Resources Conservation Service web site general map that highlights Lincoln County as well as Otero County for the distribution of *C. vinaceum* (*http://plants.usda.gov/java/county?state_name=New%20Mexico&statefips=35&symbol=CIVI4*, from 2007), and southward, based on a large known population located toward the southern tip of the Sacramento Ranger District of the Lincoln National Forest.

The petitioner claims that threats to *Cirsium vinaceum* have been ''either completely eliminated or sufficiently reduced so that the long-term survival of *C. vinaceum* is ensured.'' Each of the five listing factors is addressed by the petitioner, who analyzes threats given in the original listing of 1987 and believes that they have been minimized. The petitioner states that delisting is warranted based on the sufficient recovery of the species and the assertion that the initial listing was done in error.

In making this 90-day finding, we evaluated whether information on the changes in the status and threats to *Cirsium vinaceum*, as presented in the petition, and clarified by information readily available in our files at the time of the petition review, is substantial, thereby indicating that the petitioned action may be warranted. Our evaluation of this information is presented below.

Threats Analysis

Section 4 of the Act and its implementing regulations (50 CFR part 424) set forth the procedures for listing species, reclassifying species, or removing species from listed status. We evaluate whether that species may be endangered or threatened because of one or more of the five factors described in section 4(a)(1) of the Act. We must consider these same five factors in delisting a species. We may delist a species only if the best scientific and commercial data available indicate that the species no longer meets the definition of threatened or endangered under the Act. Delisting may be warranted as a result of: (1) Extinction, (2) recovery, and/or (3) a determination that the original data used for classification of the species as endangered or threatened were in error.

Under section 4 of the Act, we may list a species, subspecies, or Distinct Population Segment of vertebrate taxa on the basis of any of the following five factors: (A) Present or threatened destruction, modification, or curtailment of habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We also apply these same factors in determining whether the threats have been sufficiently reduced or eliminated to justify delisting. This 90-day finding is not a status assessment and does not constitute a status review under the Act.

A. Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

The June 16, 1987, listing rule (52 FR 22933) and subsequent recovery plan (Service 1993, pp. 4–6) list habitat destruction or alteration by domestic livestock, water development (e.g., withdrawal from springs, reservoir construction), trampling by recreationists, road construction, logging, and competition with exotic plants as threats to the species' habitat and range. *Cirsium vinaceum* also has been impacted by off-road vehicles, motorcycles, road maintenance, and other activities (Service 1993, pp. 4–6; Forest Service 2004, pp. 625–629).

Range and Population

The petitioner states that the number of localities and abundance of *Cirsium vinaceum* have increased since it was listed. As discussed above, the petitioner notes that the known distribution of *C. vinaceum* has grown from 20 localities at the time of listing in 1987 to 86 discovered localities by 2003. As noted in the Species Information section above, we now know that flowering adults comprise approximately 10 percent of the total number of plants (USFS 2003). This means that the 350,000 to 400,000 individuals reported in 2003 by the petitioner equate to approximately 35,000 to 40,000 flowering plants. Therefore, the estimated number of flowering plants increased from 10,000 to 15,000 in 1987 to 35,000 to 40,000 by 2003.

Our records indicate that the numbers of *Cirsium vinaceum* localities and individuals presented in the petition through 2003 are accurate. Much of the increase in individual plants is attributable to more intensive survey efforts since 1984 which also resulted in the discovery of several new areas of occupied habitat. There is no doubt that the numbers of documented *C. vinaceum* have grown between the years of 1984 and 2003, the most recent data presented in the petition.

A method to estimate the total number of plants (flowering individuals plus rosette individuals that have not flowered yet) was devised, based on a 1989 count of all rosettes in 4 *Circium vinaceum* localities, which found that the number of rosettes (non-reproductive for that year, but potentially reproductive the following year) was approximately 10 times the number of reproductive plants in the field (Thompson 1991). Using this method, the total number of individual plants has been calculated by multiplying the number of flowering plants by 10 to obtain the number of both non-reproductive rosettes and reproductive individuals. This would amount to an increase from 100,000 to 150,000 total individuals in 1987 to 350,000 to 400,000 total individuals in 2003 (Service 2005, p. 712). In terms of range size, one (Fresnal Canyon) of the

new thistle locations occurs outside the 155-square-mile area that was proposed but never finally designated as critical habitat in the 1984 listing proposal (May 16, 1984, 49 FR 20735). Thus, the overall distribution of the species has increased (Service 2005, p. 698; Sivinski 2007, p. 1). We agree with the petitioner that the numbers of localities and individuals, and the range of the species appears to have increased.

Livestock Grazing

The petitioner claims that the threat of livestock grazing activities has been adequately reduced as a result of herding practices, exclosures (fences to exclude livestock), and livestock inaccessibility due to rough terrain. In addition, the petitioner asserts that the use of exclosures, herding efforts, and natural inaccessibility collectively have satisfied one of the major actions of the recovery plan, which was to ''develop habitat management plans to alleviate threats to the species and ensure permanent protection of at least 75 percent of the known occupied habitats according to steps outlined in the plans.''

To support this conclusion, the petitioner cites the 1993 recovery plan, which mentions that grazing permittees have exerted more effort toward herding, and that many seep and spring habitats are excluded from frequent livestock use by the steepness of travertine ledges (Service 1993). The petitioner further cites the recovery plan and concludes that grazing impacts to the remaining habitats have been sufficiently mitigated as a result of exclosure fences constructed around almost half of all occupied *Cirsium vinaceum* sites recorded for 2003. According to the petition, which cites the Forest Service's 2003 Biological Assessment for the Sacramento Grazing Allotment Management Plan (Forest Service 2003), exclosures have increased *C. vinaceum* numbers for those fenced populations. The petitioner states that the recovered status of the species will be maintained by the installation of additional exclosure fences in the future, as noted in a final environmental impact statement covering the Sacramento grazing allotment (Forest Service 2004a).

At the time of listing, the presence of livestock was recognized as being detrimental to *Cirsium vinaceum* due to trampling and ground disturbance (52 FR 22933, June 16, 1987). Evidence of damage by livestock was based on the notable decrease in numbers of individuals in Lucas Canyon when exposed to excessive grazing prior to listing, and on the substantial increase in *C. vinaceum* at Bluff Springs once the area was fenced (52 FR 22933). Our current understanding of livestock impacts involves the susceptibility of the species to trampling of vulnerable seedlings, rosettes, and flowering stalks, as well as damaging of travertine and soft substrates in occupied and potential habitat (Thomson 1991, pp. 44–52; Service 2004, pp. 62–63). *Cirsium vinaceum* can recover within a few weeks after heavy grazing is reduced or eliminated, and can continue to persist with light grazing if only the foliage and not the central stem is grazed (Forest Service 2003, pp. 53, 59; Service 2005, p. 697). But livestock consumption of flowering stalks and the leaves of rosettes can cause the loss of the entire reproductive output of the plant (Forest Service 2003, pp. 53, 59; Service 2005, p. 697). Thus, in areas that are grazed, *C. vinaceum* experiences direct impacts from livestock trampling and consumption, as well as indirect impacts from ground disturbance, substrate destruction, and rechannelling of water flow (Forest Service 2003, pp. 43–56; Service 2005, p. 697).

Information in our files indicates that fencing around *C. vinaceum* individuals to prevent livestock access has produced an increase in plants in those localities. Currently, exclosures cover approximately 290 acres (ac) (120 hectares (ha)), protecting about half of the occupied habitat from the negative impacts associated with livestock use (Service 2005, p. 698). We agree with the petitioners that exclosures have protected individual plants and habitat from livestock access and destruction.

Habitat Protection

The petitioner states that the objective of the recovery plan to protect 75 percent of known occupied habitat has been met through the success of protecting *Cirsium vinaceum* from grazing through building exclosure fences. A portion of this protection also is afforded by topography, making terrain inaccessible to cattle, notes the petitioner. According to the petitioner, the recovery criterion has been exceeded based on a comparison of known population areas and *C. vinaceum* numbers between 1987 and 2003. Numbers of an estimated 10,000 to 15,000 plants from 20 known localities in 1987 are contrasted with data from 2003 for 350,000 to 400,000 plants. The petitioner links this increase to the fencing of approximately 290 ac (120 ha) of *C. vinaceum* habitat and concludes that the area fenced must have protected at least 75 percent of the known occupied habitats.

Information in our files indicates that the petitioner's claim that the number of populations and range of *Cirsium vinaceum* are greater as of the date when the petition was written than what was known in 1987 is reliable and accurate. A delisting criterion in the recovery plan involves the permanent protection of at least 75 percent of the known occupied habitat (Service 1993, p. 9). Using the most current data presented by the petitioner, the achievement of 75 percent permanent protection for the known *C. vinaceum* occupied habitat area, number of localities, or number of plants would mean that 58 of an estimated 77 acres of occupied habitat, 64 of 86 occupied localities, or 262,500 to 300,000 of 350,000 to 400,000 plants would have to be permanently protected. Although the information presented by the petitioner does not indicate that protection of 75 percent of known occupied habitat has been achieved, it does indicate that the amount of habitat in protected status has increased and that the extent of the threat of disruption or modification of habitat may be reduced.

Water Accessibility

The petitioner maintains that threats of habitat destruction from water development have been reduced adequately by the Forest Service's special-use water permit process, new State legislation, and the implementation of conservation actions in the form of habitat improvement projects recommended in the recovery plan.

The petitioner reports that New Mexico adopted in-stream flow legislation in 2005. From our records, the State of New Mexico enacted in-stream flow legislation in 2005 and then amended it in 2007. This legislation establishes a water reserve based on water donation, purchase, or lease from willing sellers to benefit species that are rare, sensitive, or have small populations (N.M. Stat. Ann. § 72–14–3.3). Use of the water is limited to aquatic or obligate riparian species within a river reach or ground water basin (N.M. Stat. Ann. § 72–14–3.3). The new State statute does provide a mechanism to protect lower drainage habitats of *Cirsium vinaceum* from drying if a strategic water reserve is created, although the legislation does not prevent the diversion of water from isolated montane wetlands or headwater springs, where *C. vinaceum* also occurs, and does not directly establish a ''strategic water reserve'' for the thistle, (N.M. Stat. Ann § 72–14–3.3). Nevertheless, the statute's goals of providing water to obligate riparian

listed species, by creating a ''strategic water reserve'', and avoiding the listing of additional species might be applied to benefit *C. vinaceum* (N.M. Stat. Ann § 72–14–3.3).

The petitioner states that through the issuance of special-use permits, the Forest Service can control the location of a water diversion point in relation to *Cirsium vinaceum* locations near springs. According to the petitioner, the recovery plan recommends water diversion for spring development only at locations downstream of suitable habitat in order to provide necessary water to the species and prevent habitat disturbance (Service 1993). Citing the LRMP Biological Opinion (Service 2005), the petitioner claims that the Forest Service can specify the location of water intake points in special use permits to protect *C. vinaceum* from habitat degradation.

The petitioner believes that water conservation to benefit *Cirsium vinaceum* has been implemented by the Forest Service. Citing the LRMP Biological Opinion (Service 2005), the petitioner describes a riparian improvement project in 2001–02 that supplied former occupied habitat with additional water by allowing drainage under roads in Water Canyon and the Rio Penasco. The petitioner maintains that this project increased water availability to plants, promoted establishment and abundance of the species, and helped to conserve *C. vinaceum*.

At the time of listing, the Service was concerned about the impacts of water development or associated habitat deterioration to *Cirsium vinaceum* individuals. The listing notice mentioned that an unauthorized 1,900 ft (579 m) long pipeline and cement spring box had been constructed at a *C. vinaceum* site, which negatively impacted nearby plants (52 FR 22933, June 16, 1987). These structures impeded water flow to the plant and provided evidence of the sensitivity of *C. vinaceum* to diminishment of its water supply. Just prior to the time of listing, the Bureau of Reclamation had conducted studies of three potential dam and reservoir sites to be used for industrial and domestic water supply in the region (52 FR 22933). Developing any of these water sites was believed to pose a significant threat to *C. vinaceum*. To emphasize the species' requirement of wetland habitat, the Service identified the adoption of in-stream flow legislation and acquisition of water rights as the first delisting criterion for *C. vinaceum* in the recovery plan (Service 1993, p. 9).

As an obligate wetland plant, *Cirsium vinaceum* continues to depend on water availability for its survival. Although the dam and reservoir projects mentioned in the listing notice were not implemented, information from our files indicates that *C. vinaceum* currently is subjected to water loss from natural drought conditions; other factors that can cause a spring to go dry (*e.g.*, rerouting of underground channels); or human impacts, such as spring development or loss of water flow to an occupied site through diversion by roads or trails (Service 1993, pp. 4–5; Service 2004, p. 35). Currently, the region has been under drought conditions since 1999. The length and severity of the drought, and therefore its ultimate impact on *C. vinaceum*, are not known (Piechota et. al. 2004, pp. 303–305). It is likely that the seasonal distribution of yearly precipitation also plays a role in water availability for *C. vinaceum*. Spring desiccation at occupied sites has led to a reduction in the number of individual plants, and in some cases, caused a loss of all plants at previously occupied sites (Forest Service 2003, pp. 35–36). It is unclear how the springs in the Sacramento Mountains would respond to a combination of extended drought and an increase in the level of water withdrawals (*e.g.*, diversions, groundwater pumping).

In summary, the new State legislation provides a mechanism to protect lower drainage habitats of *Cirsium vinaceum* from drying if a strategic water reserve is created (N.M. Stat. Ann § 72–14–3.3). Moreover, the statute's goals of providing water to obligate riparian species by creating a ''strategic water reserve'' might be applied to benefit *C. vinaceum* (N.M. Stat. Ann § 72–14–3.3). Our records indicate that in the State of New Mexico, the land owner reserves the right to determine the point of water diversion (United States v. New Mexico, 438 U.S. 696 (1978)). For populations located on the Lincoln National Forest, the Forest Service has the ability to designate the intake point for water diversion during the special use permitting process in a manner that protects *C. vinaceum* from desiccation. Information from our files supports the petitioner's claim that the Water Canyon and the Rio Penasco road improvement project conserved water and *C. vinaceum* by retaining water and diverting it toward suitable habitat (Service 2005). This retention and influx of water into suitable habitat enabled *C. vinaceum* reoccupation of these sites (Service 2005).

Road Construction, Logging, and Recreation

The petitioner cites information in the recovery plan (Service 1993) to assert that road construction, logging operations, and recreational activities do not threaten the *Cirsium vinaceum* or its habitat at this time. Specifically, the petitioner claims that the Forest Service's policy of maintaining a 200-ft (61-m) buffer region around populations protects *C. vinaceum* during road construction, logging operations, and trail planning (Service 1993). The petition also references a ''no entry area condition on a recent timber sale'' (52 FR 22933, June 16, 1987), in response to minimizing logging threats to *C. vinaceum*. The petitioner provides a quote from the previous 90-day finding highlighting the Service's acknowledgement that logging ''does not currently threaten the thistle'' (71 FR 70479, December 5, 2006). In addressing recreation, the petitioner refers to the recovery plan's mention of a fence that was constructed by the Forest Service prior to 1993 around Bluff Springs and its fragile travertine substrate to re-route foot trails (Service 1993). The Biological Assessment for the Sacramento Grazing Allotment (Forest Service 2003) also is referenced by the petitioner to support the effectiveness of the Bluff Springs exclosure by noting that *C. vinaceum* numbers have increased since the fence was constructed.

At the time of listing, there was concern that ground disturbance from road construction and logging could impact *Cirsium vinaceum* habitats if planning for logging operations did not consider the species (52 FR 22933). In addition, Bluff Springs, an area containing *C. vinaceum*, was also vulnerable to overuse by recreationists (52 FR 22933, June 16, 1987). The listing rule affirms that ''overuse for recreation or any human-caused deterioration of the area around the springs could harm the species'' (52 FR 22933). At present, our information indicates that the Forest Service applies a minimum 200-ft (61-m) protective buffer around *C. vinaceum* occurrences during forest management activities (Service 2002, p. 3; Service 2004, pp. 4–13). The exclosure constructed around Bluff Springs has served to dissuade human use and divert foot traffic from sensitive substrates at Bluff Springs, with a slowly responding increase in *C. vinaceum* numbers at that site as of 2007 (Forest Service 2003, p. 59; 2007 database). Maintenance of the buffers and exclosures appears to be assisting in the recovery of *C. vinaceum*.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The petitioner provides minimal information addressing this factor, reiterating that this factor has not been an issue for *Cirsium vinaceum*. The original listing did not cite this factor as significant and a review of information in our files does not suggest that overutilization for commercial, recreational, scientific or educational purposes currently threatens *C. vinaceum*. We agree that this issue may not be applicable to the species at this time.

C. Disease or Predation

Disease is mentioned as being an insignificant threat to *Cirsium vinaceum* in the conclusion of the petition. No information is provided by the petitioner regarding the effects of disease on the species. At the time of listing, there were no known diseases to *C. vinaceum*, and disease was not mentioned in the listing petition. Currently, we have no information in our files suggesting that disease may be a significant threat to the species.

The petitioner states that wildlife and livestock predation or consumption of *Cirsium vinaceum* is not a known threat. The 2004 Biological Assessment for the Southwestern Region is referenced as support for the assertion that wildlife predation is negligible and cattle are the primary grazers of *C. vinaceum* (Forest Service 2004). The petition cites the recovery plan to support its conclusion that threats from grazing have been alleviated by exclosures, inaccessible topography, and herding practices (Service 1993). Based on a Forest Service herbivory (plant consumption) monitoring report, the petitioner claims that livestock consumption of the plants is no longer a substantial threat because livestock herbivory during 1992 led to increases in *C. vinaceum* vigor and population growth in 1993 (Forest Service 1994). The petitioner further reports that there was no evidence of negative effects to *C. vinaceum* from livestock grazing during the years of 1995, 1998, and 2001 (Forest Service 2004). The petitioner suggests that ''a certain amount of herbivory may promote *C. vinaceum* reproduction by causing seeds to shed and by dispersing the seeds'' (p. 27 of the petition) and concludes that herbivory by livestock is not a significant threat to *C. vinaceum*.

At the time of listing, herbivory by livestock was not mentioned as a threat, but trampling of *Cirsium vinaceum* and ground disturbance by livestock were understood to be threats (52 FR 22933, June 16, 1987) (see additional discussion in Factor A above). However, by the time of the recovery plan's publication date, research verified that livestock consumption of *C. vinaceum* caused a reduction in plant rosette size and reproductive output (Service 1993, p. 5). Some thistle localities are protected from livestock access by use of exclosure fencing.

Information in our files indicates that a complex relationship exists among *Cirsium vinaceum*, precipitation, and livestock herbivory; however, overall, plants in grazed areas do more poorly than *C. vinaceum* plants protected from livestock access (Forest Service 2003, pp. 44–51). Still, our data affirm an increase in *C. vinaceum* abundance, detected during the early and mid 1990s for the Forest Service's herbivory report.

D. Existing Regulatory Mechanisms

The petitioner provides documentation of protective regulations in the form of Forest Service regulations, the Lacey Act, New Mexico State law, and a potential post-delisting monitoring process to claim that existing regulations are sufficient to conserve *Cirsium vinaceum* if it becomes delisted. Several regulations under Forest Service jurisdiction are discussed by the petitioner. A Federal regulation protects threatened and endangered species against take in National Forests, which prohibits the damage or removal of plants, including *C. vinaceum* (36 CFR 261.9). The Forest Service's issuance of special-use permits to designate points of water diversion in the Lincoln National Forest is addressed as a means to protect *C. vinaceum* from spring development. Based on the recovery plan, the petitioner mentions that a permit is required to collect plants in *C. vinaceum* localities (Service 1993). The petitioner presents two other species that have received protection from the Sensitive Species program (McKittrick pennyroyal (*Hedeoma apiculatum*) and Tumamoc globeberry (*Tumamoca macdougalii*)), and claims that this program provides an additional regulatory mechanism for *C. vinaceum* protection (58 FR 49244; 58 FR 33562). The petitioner believes that the 200-ft (61-m) buffer around roads, trails, and timber operations described in the recovery plan (Service 1993), along with the standards and guidelines given in the LRMP Biological Opinion (Service 2005), offer direction for actions in the Lincoln National Forest, which further protect *C. vinaceum*.

The petitioner also claims that the Lacey Act provides adequate protection to *Cirsium vinaceum*. According to the petition, the Lacey Act makes importing, exporting, transporting, selling, receiving, acquiring, or purchasing *C. vinaceum* unlawful within or outside of State, National, and international boundaries (16 U.S.C. 3372; Service 1993, p. 6). At the State level, the petitioner asserts that *C. vinaceum* receives protection from the New Mexico State Endangered Plant Species Act. The New Mexico State Endangered Plant Species Act prohibits the take, damage, or sale of listed plants, and requires permits for scientific study (N.M. Stat. Ann. § 19.21.2). The recent in-stream flow legislation is mentioned by the petitioner as another protective regulation for the species in terms of water provisioning (N.M. Stat. Ann § 72–14–3.3). Finally, the petitioner believes that the post-delisting monitoring plan will protect the species because any indication of becoming extinct would trigger the emergency listing process of the Act that would re-list *C. vinaceum* (16 U.S.C. 1533(g)).

At the time of listing, only the Federal regulations at 36 CFR 261.9 prohibiting take of plants from National Forests were in existence (52 FR 22933, June 16, 1987). The other regulations had not been enacted. Currently, under the Act, damage, destruction, removal, possession, transport, or sale of *Cirsium vinaceum* is prohibited on Federal lands (16 U.S.C. 1531 *et seq.*). On State lands, the Act serves to prohibit moving, digging up, cutting, damaging, destroying, transporting, or selling *C. vinaceum*, including instances where trespassing is involved (16 U.S.C. 1531 *et seq.*). Permits may be authorized under specific instances to engage in otherwise lawful activities with *C. vinaceum*.

Information in our files, along with information from the petition, supports the existence of the mentioned regulatory mechanisms for *Cirsium vinaceum* as a listed species. As a delisted species, *C. vinaceum* individuals would continue to be protected by the Lacey Act, if involved in collection, transport, or commerce, as well as the New Mexico State Endangered Plant Species Act, if the plant retains its state status as endangered; however, these laws do not protect *C. vinaceum* habitat. If delisted, *C. vinaceum* could benefit from regulatory protection as a Forest Service sensitive species. We affirm that *C. vinaceum* would be carefully monitored for at least 5 years after delisting to ensure that the species would not be at risk of extinction during that time. If delisted, the post-delisting monitoring plan would likely include thresholds indicating when a status review was warranted.

E. Other Factors Affecting the Species

Citing information from the recovery plan and the LRMP Biological Opinion (Service 2005), the petitioner discusses a lack of evidence indicating that exotic teasel (*Dipsacus sylvestris*) and musk thistle (*Carduus nutans*) are posing threats to *C. vinaceum* via competition. The petitioner acknowledges the ''potential for *C. vinaceum* to become excluded from some of its drier habitats by the invasive teasel,'' which the petitioner quotes from the recovery plan (Service 1993). However, the petitioner also claims that evidence concerning competitive impacts to *C. vinaceum* from interactions with bull thistle (*Cirsium vulgare*), Canada thistle (*Cirsium arvense*), and poison hemlock (*Conium maculatum*) has not been presented. Thus, the petitioner concludes that competition from invasive plants is not an immediate threat to *C. vinaceum*.

At the time of listing, competition with introduced teasel and musk thistle had reduced or eliminated populations of *Cirsium vinaceum* at sites where it had formerly grown or where habitat was still suitable but where invasive plant species were present (52 FR 22933, June 16, 1987). Information in our files indicates that exotic teasel and musk thistle occurrences are being monitored and are found at approximately one-third of the *C. vinaceum* localities (2007 database). At this time we have no information suggesting that competition among *C. vinaceum* and exotic plants is a significant threat. Similarly, we have no information establishing bull thistle, Canada thistle, and poison hemlock as immediate threats to *C. vinaceum*. Information in our files suggests the musk thistle may be serving as a vector for *Rhinocyllus conicus*, the exotic seed head weevil (Sivinski 2007, pp. 6, 13; Gardner and Thompson 2008, p. 1), although future interactions among the musk thistle, weevil, and *C. vinaceum* remain unclear.

Finding

We have reviewed the delisting petition and the supporting documents, as well as other information in our files. We find that the delisting petition and other information in our files present substantial information that threats to *Cirsium vinaceum* may have been reduced and that delisting *C. vinaceum* may be warranted, and we are initiating a status review. Our process for making this 90-day finding under section 4(b)(3)(A) of the Act is limited to a determination of whether the information in the petition presents ''substantial scientific and commercial information,'' which is interpreted in our regulations as ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)).

The petitioner provides a detailed petition that reviews much of the knowledge of *Cirsium vinaceum*, including the natural history, range, and threats. The documents referenced provide substantial information indicating that *C. vinaceum* is more widely distributed throughout several canyon drainages in the Sacramento Mountains area than recorded at the time of listing. The 2003 population data of *C. vinaceum*, the most recent survey data analyzed by the petitioner, indicates that the number of individuals has increased since the time of listing in 1987. Additionally, substantial documentation of the reduction of threats from potential water development, road construction, logging operations, and recreational activities is presented. The petitioner also provides substantial information indicating that additional regulatory mechanisms may now exist that could limit damage to individuals and the development of water in riparian areas.

It is important to note that the ''substantial information'' standard for a 90-day finding is in contrast to the Act's ''best scientific and commercial data'' standard that applies to a 12-month finding as to whether a petitioned action is warranted. A 90-day finding is not a status assessment of the species and does not constitute a status review under the Act. Our final determination as to whether a petitioned action is warranted is not made until we have completed a thorough status review of the species, which is conducted following a substantial 90-day finding. Because the Act's standards for 90-day and 12-month findings are different, as described above, a substantial 90-day finding does not necessarily mean that the 12-month finding will be warranted.

References Cited

A complete list of all references cited in this notice is available upon request from the New Mexico Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Author

The primary authors of this rule are the New Mexico Ecological Services Field Office staff (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: October 28, 2008.

Kenneth Stansell,

Acting Director, Fish and Wildlife Service.

[FR Doc. E8–26275 Filed 11–5–08; 8:45 am]

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Notices

Federal Register

Vol. 73, No. 216

Thursday, November 6, 2008

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Notice of Request for a Revision of a Currently Approved Information Collection

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Commodity Credit Corporation's (CCC) intention to request a revision for a currently approved information collection in support of the CCC Export Credit Guarantee Program (GSM–102) based on current program levels and participants. CCC is not requesting a revision or extension for a currently approved information collection in support of the Intermediate Term Guarantee (GSM–103) Program or the Supplier Credit Guarantee Program, due to repeal of these programs by the Food, Conservation, and Energy Act of 2008.

DATES: Comments on this notice must be received by January 5, 2009 to be assured consideration.

Additional Information or Comments: Contact P. Mark Rowse, Director, Office of Trade Programs, Credit Program Division, Foreign Agricultural Service, U.S. Department of Agriculture, AgStop 1025, Washington, DC 20250–1025, telephone (202) 720–0624.

SUPPLEMENTARY INFORMATION:

Title: CCC Export Credit Guarantee (GSM–102) Program.

OMB Number: 0551–0004.

Expiration Date of Approval: March 31, 2009.

Type of Request: Revision of a currently approved information collection.

Abstract: The primary objective of the GSM–102 program is to expand U.S. agricultural exports by making available export credit guarantees to encourage U.S. private sector financing of foreign purchases of U.S. agricultural commodities on credit terms. The CCC currently has programs operating in at least 176 countries and regions with 2,900 exporters eligible to participate. Under 7 CFR part 1493, exporters are required to submit the following: (1) Information about the exporter for program participation; (2) export sales information in connection with applying for a payment guarantee; (3) information regarding the actual export of the commodity (evidence of export report); (4) notice of default and claims for loss; and (5) other documents, if applicable, including notice of assignment of the right to receive proceeds under the export credit guarantee. In addition, each exporter and exporter's assignee (U.S. financial institution) must maintain records on all information submitted to CCC and in connection with sales made under GSM–102. The information collected is used by CCC to manage, plan, evaluate, and account for government resources. The reports and records are required to ensure the proper and judicious use of public funds.

Estimate of Burden: The public reporting burden for these collections is estimated to average 0.49 hours per response.

Respondents: Exporters of U.S. agricultural commodities, banks or other financial institutions, producer associations, export trade associations, and U.S. Government agencies.

Estimated Number of Respondents: 78 per annum.

Estimated Number of Responses per Respondent: 62.79 per annum.

Estimated Total Annual Burden of Respondents: 2,400 hours.

Copies of this information collection can be obtained from Tamoria Thompson, the Agency Information Collection Coordinator, at (202) 690–1690 or e-mail at *Tamoria.Thompson@fas.usda.gov.*

Requests for Comments: Send comments regarding (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to P. Mark Rowse, Director, Office of Trade Programs, Credit Programs Division, Foreign Agricultural Service, U.S. Department of Agriculture, AgStop 1025, Washington, DC 20250–1025, or to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503. Persons with disabilities who require an alternative means for communication of information (Braille, large print, audiotape, etc.) should contact USDA's Target Center at (202) 720–2600 (voice and TDD). All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: November 3, 2008.

Michael W. Yost,

Administrator, Foreign Agricultural Service.

[FR Doc. E8–26505 Filed 11–5–08; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Forest Service

Eastern Washington Cascades Provincial Advisory Committee and the Yakima Provincial Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Eastern Washington Cascades Provincial Advisory Committee and the Yakima Provincial Advisory Committee will meet on Thursday, November 20, 2008 at the Okanogan-Wenatchee National Forest Headquarters office, 215 Melody Lane, Wenatchee, WA. This meeting will begin at 9 a.m. and continue until 3 p.m. During this meeting Provincial Advisory Committee members will share information about their field of representation and receive information about the Dry Forest Strategy, the Northern Spotted Owl Recovery Plan, and the Access Travel Management Plan. All Eastern Washington Cascades

and Yakima Province Advisory Committee meetings are open to the public.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Becki Heath, Designated Federal Official, USDA, Okanogan-Wenatchee National Forest, 215 Melody Lane, Wenatchee, Washington 98801, 509–664–9200.

Dated: October 30, 2008.

Rebecca Lockett Heath,

Designated Federal Official, Okanogan-Wenatchee National Forest.

[FR Doc. E8–26372 Filed 11–5–08; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Proposed Information Collection; Comment Request; Miscellaneous Short-Supply Activities

AGENCY: Bureau of Industry and Security.

ACTION: Notice.

SUMMARY: The Department of Commerce, 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 5, 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 copies of the information collection instrument and instructions should be directed to Larry Hall, BIS ICB Liaison, (202) 482–4895, *lhall@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This collection of information is required by Export Administration Regulations (EAR) sections 754.6 and 754.7. This information collection comprises two short supply activities: ''Registration of U.S. Agricultural Commodities for Exemption from Short Supply Limitations on Export (USAG),'' and ''Petitions for the Imposition of Monitoring or Controls on Recyclable Metallic Materials; Public Hearings (Petitions).'' Under USAG activity, U.S. entities may request exemption from certain short supply export control limitations on agricultural products. The Petitions activity allows U.S. entities involved in the recycling of metallic materials to petition BIS for the imposition of export controls or the monitoring of exports of metallic materials.

II. Method of Collection

Submitted in paper form.

III. Data

OMB Control Number: 0694–0102.

Form Number(s): None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations, or not-for-profit organizations.

Estimated Number of Respondents: 2.

Estimated Time per Response: 1 hour for an exemption; 200 hours for a petition.

Estimated Total Annual Burden Hours: 201 hours.

Estimated Total Annual Cost to Public: $0.

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 31, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–26446 Filed 11–5–08; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–810]

Stainless Steel Bar From India: Final Results of Changed Circumstances Antidumping Duty Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''Department'') has determined, pursuant to section 751(b) of the Tariff Act of 1930, as amended (''the Act''), that India Steel Works Limited (''India Steel'') is the successor-in-interest to Isibars Limited (''Isibars''). As a result, India Steel will be accorded the same treatment previously accorded to Isibars with regard to the antidumping duty order on stainless steel bar (''SSB'') from India as of the date of publication of this notice in the **Federal Register**.

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

FOR FURTHER INFORMATION CONTACT: Cory Hervey and Devta Ohri, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–1664 and (202) 482–3853, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 21, 1995, the Department of Commerce (''Department'') published in the **Federal Register** the antidumping duty order on SSB from India. *See Antidumping Duty Orders: Stainless Steel Bar from Brazil, India and Japan,* 60 FR 9661 (February 21, 1995). On August 4, 2008, India Steel requested that the Department initiate a changed circumstances review of this order to determine that, for purposes of the antidumping law, India Steel is the successor-in-interest to Isibars. *See* August 4, 2008, letter from India Steel.

On September 25, 2008, the Department published the notice of initiation and preliminary results of review, finding that India Steel is the successor-in-interest to Isibars and should be treated as such for antidumping duty cash deposit purposes. *See Notice of Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Review: Stainless Steel Bar from India,* 73 FR 55497 (September 25, 2008). We invited parties to comment on the preliminary results. We received no comments or requests for a hearing.

Scope of the Review

Imports covered by the order are shipments of SSB. SSB means articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. SSB includes cold-finished SSBs that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi-finished products, cut-to-length flat-rolled products (*i.e.*, cut-to-length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), wire (*i.e.*, cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes, and sections.

The SSB subject to these reviews is currently classifiable under subheadings 7222.11.00.05, 7222.11.00.50, 7222.19.00.05, 7222.19.00.50, 7222.20.00.05, 7222.20.00.45, 7222.20.00.75, and 7222.30.00.00 of the *Harmonized Tariff Schedule of the United States* (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

On May 23, 2005, the Department issued a final scope ruling that SSB manufactured in the United Arab Emirates out of stainless steel wire rod from India is not subject to the scope of this order. *See* Memorandum from Team to Barbara E. Tillman, ''Antidumping Duty Orders on Stainless Steel Bar from India and Stainless Steel Wire Rod from India: Final Scope Ruling,'' dated May 23, 2005, which is on file in the Central Records Unit in room 1117 of the main Department building. *See also Notice of Scope Rulings,* 70 FR 55110 (September 20, 2005).

Final Results of Changed Circumstances Review

For the reasons stated in the preliminary results, and because the Department did not receive any comments following the preliminary results of this review, the Department continues to find that India Steel is the successor-in-interest to Isibars for antidumping duty cash deposit purposes.

Instructions to U.S. Customs and Border Protection

The Department will instruct CBP to suspend liquidation of all shipments of the subject merchandise produced and exported by India Steel entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice at 2.01 percent (*i.e.*, Isibars's cash deposit rate). This deposit rate shall remain in effect until publication of the final results of the next administrative review in which India Steel participates.

This notice also serves as a reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.306. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This notice in accordance with sections 751(b) and 777(i)(1) of the Act, and sections 351.216(e) and 351.221(c)(3)(i) of the Department's regulations.

Dated: October 30, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–26393 Filed 11–5–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

(A–570–935)

Certain Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 6, 2008.

SUMMARY: The Department of Commerce (''Department'') preliminarily determines that certain circular welded carbon quality steel welded line pipe (''welded line pipe'') from the People's Republic of China (''PRC'') is being, or is likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733 of the Tariff Act of 1930, as amended (''the Act''). The estimated dumping margins are shown in the ''Preliminary Determination'' section of this notice.

FOR FURTHER INFORMATION CONTACT: Jeff Pedersen or Rebecca Pandolph, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone: (202) 482–2769 or 482–3627, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 3, 2008, the Department received a petition concerning imports of welded line pipe from the PRC and the Republic of Korea (''Korea'') filed in proper form by United States Steel Corporation (''U.S. Steel''), Maverick Tube Corporation (''Maverick''), Tex–Tube Company (''Tex–Tube''), and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, and AFL–CIO-CLC (''United Steelworkers'') (collectively, ''Petitioners''). *See* Imposition of Antidumping and Countervailing Duties: Certain Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China and the Republic of Korea, dated April 3, 2008 (in four volumes) (''Petition''). On April 23, 2008, the Department initiated antidumping duty investigations of welded line pipe from the above–mentioned countries. *See Certain Circular Welded Carbon Quality Steel Line Pipe From the Republic of Korea and the People's Republic of China: Initiation of Antidumping Duty Investigations*, 73 FR 23188 (April 29, 2008) (''*Initiation Notice*'').

Also, on April 23, 2008, the Department issued a quantity and value (''Q&V'') questionnaire to each of the 65 companies identified by the Petitioners as potential exporters or producers of welded line pipe from the PRC. *See* supplement to the petition at Exhibit II–Supp I, dated April 14, 2008. The Department received timely responses to its Q&V questionnaire from the following nine companies: Benxi Northern Steel Pipes Co., Ltd. (''Benxi''); Huludao Steel Pipe Industrial Co., Ltd.(''Huludao Pipe''); Pangang Group Behai Pipe Corporation (''Pangang''); Shanghai Metals & Minerals Import & Export Corp. d/b/a Shanghai Minmetals Materials & Products Corp. (''Shanghai

Metals''); Tianjin Xingyuda Import and Export Company (''Tianjin''); Nanjing HuaDong Steel Pipes Manufacturing Co., Ltd. (''Nanjing''); Shashi Steel Pipe Works, SINOPEC (''Shashi''); Xuzhou Guanghuan Steel Tube Co., Ltd. (''Xuzhou''); and Jiangsu Yulong Steel Pipe Co., Ltd. (''Jiangsu Yulong''). On May 20, 2008, the Department rejected the Q&V responses submitted by Nanjing, Shashi, Xuzhou, and Jiangsu Yulong because they were improperly filed. The Department requested that Nanjing, Shashi, Xuzhou, and Jiangsu Yulong correct certain filing deficiencies. *See* Letters to Nanjing, Shashi, Xuzhou, and Jiangsu Yulong, dated May 20, 2008. The Department received information indicating that Nanjing, Shashi, and Xuzhou had received the Department's May 20, 2008, letter, but Nanjing, Shashi, and Xuzhou did not refile their submissions. The Department did not have any information to whether Jiangsu Yulong had received the May 20, 2008, letter and on July 15, 2008, the Department sent a letter to Jiangsu Yulong requesting that it explain why it had failed to respond to the Department's May 20, 2008, letter, in which the Department requested that the company properly refile its Q&V response. *See* Letter to Ms. Tang Wei–jun regarding, Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China, dated July 15, 2008. On July 28, 2008, Jiangsu Yulong resubmitted its Q&V response and explained that it had not responded to the Department's May 20, 2008, letter concerning its improperly filed Q&V response because it had not received the letter. *See* Letter to the Department from Jiangsu Yulong, dated July 28, 2008.

On May 13, 2008, the Department received product matching comments from one of the Petitioners, Maverick, and scope comments from Wheatland Tube Company (''Wheatland''), a domestic producer. *See* the ''Scope Comments'' section of this notice for further details. On May 27, 2008, the Department received comments from Maverick on the record of this investigation rebutting model matching comments submitted in the Korean investigation of welded line pipe.

On May 16, 2008, the International Trade Commission (''ITC'') preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of welded line pipe from the PRC and Korea. *See Certain Circular Welded Carbon Quality Steel Line Pipe from China and Korea, Investigation Nos. 701–TA–455 and 731–TA–1149–1150 (Preliminary)*, 73 FR 31712 (June 3, 2008).

On May 27, 2008, the Department received comments from Maverick regarding respondent selection. No other party submitted comments regarding respondent selection.

The Department received separate rate applications from Huludao Pipe on June 23, 2008, and from Benxi, Pangang, Shanghai Metals, Tianjin, and Jiangsu Yulong on June 30, 2008.

On June 3, 2008, and July 9, 2008, the Department selected Huludao Pipe and Shanghai Metals, respectively, as mandatory respondents. *See* Memoranda to File: ''Respondent Selection in the Antidumping Duty Investigation of Circular Welded Carbon Quality Steel Line Pipe (welded line pipe) from the People's Republic of China (PRC),'' from Rebecca Pandolph through Howard Smith and Abdelali Elouradia, dated June 3, 2008, and ''Amendment to Respondent Selection in the Antidumping Duty Investigation of Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China,'' from Jeffrey Pedersen and Rebecca Pandolph through Howard Smith and Abdelali Elouradia, dated July 9, 2008.

The Department issued its antidumping questionnaire to Huludao Pipe and Shanghai Metals on June 4, 2008, and July 9, 2008, respectively. The Department issued supplemental questionnaires to, and received responses from, the mandatory and separate rate respondents from July 2008 through October 2008. The Petitioners submitted comments to the Department regarding the questionnaire and supplemental questionnaire responses of the mandatory and separate rate respondents from July 2008 through September 2008.

On July 29, 2008, the Department released to interested parties a memorandum which listed potential surrogate countries and invited interested parties to comment on surrogate country and factor value selection. See Letter to All Interested Parties from Howard Smith, Program Manager, Office 4, concerning ''Antidumping Duty Investigation of Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China,'' dated July 29, 2008.

On August 8, 2008, Maverick and U.S. Steel, two of the petitioning firms, submitted comments on surrogate country selection in which they both recommended selecting India as the surrogate country in this investigation. *See* Letter from Maverick, regarding Certain Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Comments on the Proper Surrogate Country, dated August 8, 2008, and Letter from U.S. Steel, regarding Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Surrogate Country Selection, dated August 8, 2008.

On August 12, 2008, Maverick and U.S. Steel requested postponement of the preliminary determination. On August 21, 2008, the Department extended this preliminary determination by fifty days. *See Certain Circular Welded Carbon Quality Steel Line Pipe from the Republic of Korea and the People's Republic of China: Postponement of Preliminary Determination of Antidumping Duty Investigation*, 73 FR 50941 (August 29, 2008).

On October 3, 2008, Shanghai Metals requested that the Department extend the final determination in this case. *See* the ''Postponement of Final Determination and Extension of Provisional Measures'' section of this notice below.

On September 2 and September 9, 2008, the Petitioners and Huludao Pipe submitted comments on, and calculations for, the surrogate values. On September 15, 2008, Petitioners and Huludao Pipe submitted rebuttal comments regarding surrogate values. The submitted surrogate value data are from India.

On September 30, 2008, the Petitioners and Huludao Pipe submitted comments to be considered in the Department's preliminary determination.

Period of Investigation

The period of investigation (''POI'') is October 1, 2007, through March 31, 2008. This period comprises the two most recently completed fiscal quarters as of the month preceding the month in which the petition was filed (*i.e.*, April 2008). *See* 19 CFR 351.204(b)(1).

Scope of the Investigation

The merchandise covered by this investigation is circular welded carbon quality steel pipe of a kind used for oil and gas pipelines (welded line pipe), not more than 406.4 mm (16 inches) in outside diameter, regardless of wall thickness, length, surface finish, end finish or stenciling.

The term ''carbon quality steel'' includes both carbon steel and carbon steel mixed with small amounts of alloying elements that may exceed the individual weight limits for nonalloy steels imposed in the Harmonized Tariff Schedule of the United States (''HTSUS''). Specifically, the term

''carbon quality'' includes products in which (1) iron predominates by weight over each of the other contained elements, (2) the carbon content is 2 percent or less by weight and (3) none of the elements listed below exceeds the quantity by weight respectively indicated:
(i) 2.00 percent of manganese,
(ii) 2.25 percent of silicon,
(iii) 1.00 percent of copper,
(iv) 0.50 percent of aluminum,
(v) 1.25 percent of chromium,
(vi) 0.30 percent of cobalt,
(vii) 0.40 percent of lead,
(viii) 1.25 percent of nickel,
(ix) 0.30 percent of tungsten,
(x) 0.012 percent of boron,
(xi) 0.50 percent of molybdenum,
(xii) 0.15 percent of niobium,
(xiii) 0.41 percent of titanium,
(xiv) 0.15 percent of vanadium, or
(xv) 0.15 percent of zirconium.

Welded line pipe is normally produced to specifications published by the American Petroleum Institute (''API'') (or comparable foreign specifications) including API A–25, 5LA, 5LB, and X grades from 42 and above, and/or any other proprietary grades or non–graded material. Nevertheless, all pipe meeting the physical description set forth above that is of a kind used in oil and gas pipelines, including all multiple–stenciled pipe with an API welded line pipe stencil is covered by the scope of this investigation.

Excluded from this scope are pipes of a kind used for oil and gas pipelines that are multiple–stenciled to a standard and/or structural specification and have one or more of the following characteristics: is 32 feet in length or less; is less than 2.0 inches (50 mm) in outside diameter; has a galvanized and/or painted surface finish; or has a threaded and/or coupled end finish. (The term ''painted'' does not include coatings to inhibit rust in transit, such as varnish, but includes coatings such as polyester.)

The welded line pipe products that are the subject of these investigations are currently classifiable in the HTSUS under subheadings 7306.19.10.10, 7306.19.10.50, 7306.19.51.10, and 7306.19.51.50. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these investigations is dispositive.

Scope Comments

In the *Initiation Notice*, the Department stated that the scope of the welded line pipe investigations may cover certain merchandise potentially subject to the on–going antidumping duty and countervailing duty investigations of circular welded pipe (''CWP'') from the PRC. The Department went on to note in the *Initiation Notice* that once certain scope issues in the CWP investigations have been resolved, it intended to reexamine the welded line pipe scope language to ensure that there was no overlap between the scope of the CWP and welded line pipe investigations. *See Initiation Notice*, 73 FR 23188, 23189. Moreover, in accordance with the preamble to the Department's regulations, the Department stated in the *Initiation Notice* that it would set aside a period of time for parties to raise issues regarding product coverage, and encouraged all parties to submit comments within 20 calendar days of publication of that notice. *See Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323, (May 19, 1997) and *Initiation Notice*. The Department received scope comments from Wheatland, a domestic producer, requesting that the Department modify the welded line pipe scope to take into account the scope definition ultimately set out in the CWP investigations. *See* Letter from Wheatland, regarding Comments on Scope of Investigations, dated May 13, 2008.

Given that the scope issue in the CWP investigation has been resolved, we have modified the scope of the welded line pipe investigations to eliminate the overlap that existed between the CWP and welded line pipe investigations. Specifically, we added the following language to the scope description:[1]

> Excluded from this scope are pipes of a kind used for oil and gas pipelines that are multiple–stenciled to a standard and/or structural specification and have one or more of the following characteristics:[2] is 32 feet in length or less; is less than 2.0 inches (50 mm) in outside diameter; has a galvanized and/or painted surface finish; or has a threaded and/or coupled end finish. (The term ''painted'' does not include coatings to inhibit rust in transit, such as varnish, but includes coatings such as polyester.)

Non–Market Economy Treatment

The Department considers the PRC to be a non–market economy (''NME'') country. In accordance with section 771(18)(C)(i) of the Act, any determination that a country is an NME country shall remain in effect until revoked by the administering authority. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Preliminary Results of 2001–2002 Administrative Review and Partial Rescission of Review*, 68 FR 7500 (February 14, 2003), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2001–2002 Administrative Review and Partial Rescission of Review*, 68 FR 70488 (December 18, 2003). The Department has not revoked the PRC's status as an NME country. Therefore, in this preliminary determination, we continued to treat the PRC as an NME country and apply our current NME methodology.

Selection of a Surrogate Country

In an investigation involving imports from NME countries, section 773(c)(1) of the Act directs the Department to generally base normal value (''NV'') on the value of the NME producer's factors of production. In accordance with section 773(c)(4) of the Act, in valuing the factors of production, the Department shall utilize, to the extent possible, the prices or costs of factors of production in one or more market economy countries that are at a level of economic development comparable to that of the NME country and are significant producers of merchandise comparable to the subject merchandise.

The Department has determined that Colombia, India, Indonesia, the Philippines, and Thailand are countries that are at a level of economic development comparable to that of the PRC. *See* Memorandum regarding ''Antidumping Duty Investigation of Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Request for a List of Surrogate Countries,'' dated May 27, 2008 (''Policy Memorandum''). From among these economically comparable countries, the Department has preliminarily selected India as the surrogate country for this investigation because it determined that: (1) India is a significant producer of merchandise comparable to the subject merchandise and (2) reliable Indian data for valuing the factors of production are

[1] *See* Memorandum to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, from Abdelali Elouaradia, Director, Office 4 Operations, regarding ''Antidumping and Countervailing Duty Investigations of Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Scope Modification,'' dated August 29, 2008 (''Scope Modification Memorandum'').

[2] This sentence differs from the language contained in the Scope Modification Memorandum''. The language in the Scope Modification Memorandum is as follows: ''Excluded from this scope are pipes that are multiple-stenciled to a standard and/or structural specification and to any other specification, such as the API-5L specification, when it also has one or more of the following characteristics.''

readily available. *See* Memorandum to Abdelali Elouaradia, Office Director, through Howard Smith, Program Manager, from Jeffrey Pedersen and Rebecca Pandolph, International Trade Compliance Specialists, concerning ''Antidumping Duty Investigation of Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Selection of a Surrogate Country,'' dated September 22, 2008.

Separate Rates

In the *Initiation Notice*, the Department notified parties of the recent application process by which exporters and producers may obtain separate–rate status in NME investigations. *See Initiation Notice*, 73 FR 23188, 23193. The process requires exporters and producers to submit a separate–rate status application. *See also Policy Bulletin 05.1: Separate–Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non–Market Economy Countries*, (April 5, 2005), available at http://ia.ita.doc.gov (*Policy Bulletin 05.1*).[3] However, the standard for eligibility for a separate rate, which is whether a firm can demonstrate an absence of both *de jure* and *de facto* governmental control over its export activities, has not changed.

In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate. It is the Department's policy to assign all exporters of merchandise subject to investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Exporters can demonstrate this independence through the absence of both *de jure* and *de facto* governmental control over export activities. The Department analyzes each entity exporting the subject merchandise under a test arising from the *Notice of Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (''Sparklers''), as further developed in *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (''*Silicon Carbide*''). However, if the Department determines that a company is wholly foreign–owned or located in a market economy, then a separate rate analysis is not necessary to determine whether it is independent from government control.

A. Separate Rate Applicants

Joint Ventures Between Chinese and Foreign Companies or Wholly Chinese-Owned Companies

All of the separate rate applicants in this investigation, including the mandatory respondents Huludao Pipe and Shanghai Metals, stated that they are either joint ventures between Chinese and foreign companies or are wholly Chinese–owned companies (collectively, ''PRC SR Applicants''). Therefore, the Department must analyze whether these respondents can demonstrate the absence of both de jure and de facto governmental control over export activities.

a. Absence of De Jure Control

The Department considers the following de jure criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies. *See Sparklers*, 56 FR at 20589 at Comment 1.

The evidence provided by Benxi, Huludao Pipe, Pangang, Shanghai Metals, Tianjin, and Jiangsu Yulong supports a preliminary finding of *de jure* absence of governmental control based on the following: (1) an absence of restrictive stipulations associated with the individual exporters' business and export licenses; (2) there are applicable legislative enactments decentralizing control of the companies; and (3) and there are formal measures by the government decentralizing control of companies. *See e.g.* Huludao's June 23, 2008 Separate Rate Application (''Huludao SRA'') and Benxi's June 23, 2008 Separate Rate Application (''Benxi SRA'').

b. Absence of De Facto Control

Typically the Department considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) whether the export prices are set by or are subject to the approval of a governmental agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. See Silicon Carbide, 59 FR at 22586–87; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995). The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

The Petitioners argue that Shanghai Metals, Benxi, and Pangang are directly or indirectly controlled by the PRC government and should, therefore, not be granted separate rates. For example, the Petitioners maintain that Shanghai Metals was a state–owned enterprise during the POI and that two of its employees were former employees of the PRC government. *See* Letter from U.S. Steel regarding ''Certain Circular Welded Carbon Quality Line Pipe From the People's Republic of China,'' dated August 15, 2008. Accordingly, the Petitioners argue that these three entities are ineligible for a separate rate. *See* Letters from Maverick and U.S. Steel, dated July 15, 2008, regarding Shanghai Metal's, Benxi's, and Pangang's separate rate applications. However, the Department has previously granted separate rate status to both wholly state–owned producers and producers whose stock was partially owned by a government state assets management company when evidence of actual government control was not present. *See Lightweight Thermal Paper From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 57329 (October 2, 2008) and the accompanying Issues and Decisions Memorandum at Comment 7. Absent evidence of de facto control over export

[3] *Policy Bulletin 05.1* states: ''while continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applied both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of ''combination rates'' because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question and produced by a firm that supplied the exporter during the period of investigation.'' *See Policy Bulletin 05.1* at 6.

activities, government ownership alone does not warrant denying a company a separate rate.[4] The Petitioners have not provided any evidence of government participation in the export decisions of the directors and or managers of Shanghai Metals, Benxi, or Pangang.

We preliminarily determine that the evidence placed on the record of this investigation by all of the PRC SR Applicants demonstrates an absence of *de facto* government control of exports of the merchandise under investigation, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide*. Shanghai Metals, Benxi, and Pangang all certified that their export prices are not set by, subject to the approval of, or in any way controlled by a government entity at any level and that they have independent authority to negotiate and sign export contracts, providing price negotiation documents for their first U.S. sale. *See, e.g.*, Shanghai Metals' June 30, 2008, Separate Rate Application (''Shanghai Metals SRA''), Benxi SRA, dated June 30, 2008, and Pangang's July 1, 2008, Separate Rate Application (''Pangang SRA''). Shanghai Metals also reported that according to its articles of association, the general assembly of employee representatives has the right to select the general manager and to decide how profits will be distributed. *See* Shanghai Metals SRA, dated June 30, 2008, at 14–16. Benxi reported that according to its articles of association, its board of directors has the right to appoint the general manager and to decide how profits will be distributed. See Benxi SRA, dated June 30, 2008, at 13–15. Pangang submitted a board resolution and an internal notice of a new appointment which demonstrates its independent selection of management. See Pangang SRA, dated July 1, 2008, at Exhibit 10. Moreover, Shanghai Metals reported that neither of the two employees named by the Petitioners worked for the PRC government and it provided the employment history for the two employees. *See* Letter from Shanghai Metals regarding ''Circular Welded Carbon Quality Line Pipe from China–Response to Petitioners' Allegations,'' dated August 25, 2008. Additionally, the other PRC SR applicants all submitted evidence that supports a preliminary finding of *de facto* absence of governmental control. *See, e.g.*, Huludao Pipe SRA, dated June 23, 2008, Jiangsu Yulong's June 30, 2008, Separate Rate Application and Tianjin's June 30, 2008 Separate Rate Application. Thus, we preliminarily determine that there is an absence of both *de jure* and *de facto* government control with respect to each of the PRC SR Applicants.

Therefore, the Department has preliminarily granted separate rate status to the following companies: Benxi, Huludao Pipe, Pangang, Shanghai Metals, Tianjin, and Jiangsu Yulong. The Department has calculated company–specific dumping margins for the two mandatory respondents, Huludao Pipe and Shanghai Metals, and assigned the other companies that have been granted a separate rate a dumping margin equal to a simple average of the dumping margins calculated for the two mandatory respondents.

B. Companies Not Receiving a Separate Rate

The Department has determined that all parties applying for a separate rate in this segment of the proceeding have demonstrated an absence of government control both in law and in fact (see discussion above), and is, therefore, granting separate rate status to all applicants.

The PRC–Wide Entity

Although PRC exporters of subject merchandise to the United States were given an opportunity to provide Q&V information to the Department, not all exporters responded to the Department's request for Q&V information.[5] Based upon our knowledge of the volume of imports of subject merchandise from the PRC, we have concluded that the companies that responded to the Q&V questionnaire do not account for all U.S. imports of subject merchandise from the PRC made during the POI. We have treated the non–responsive PRC producers/exporters as part of the PRC–wide entity because they did not qualify for a separate rate.

Section 776(a)(2) of the Act provides that the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination if an interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified.

As noted above, the PRC–wide entity withheld information requested by the Department. As a result, pursuant to section 776(a)(2)(A) of the Act, we find it appropriate to base the PRC–wide dumping margin on facts available. *See Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam*, 68 FR 4986 (January 31, 2003), unchanged in *Notice of Final Antidumping Duty Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 37116 (June 23, 2003).

Section 776(b) of the Act provides that, in selecting from among the facts otherwise available, the Department may employ an adverse inference if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold–Rolled Flat–Rolled Carbon–Quality Steel Products From the Russian Federation*, 65 FR 5510, 5518 (February 4, 2000); *see also Statement of Administrative Action*, accompanying the Uruguay Round Agreements Act , H.R. Rep. No. 103–316, Vol. I at 843 (1994) (''*SAA*''), reprinted in 1994 U.S.C.C.A.N. 4040 at 870. Because the PRC–wide entity did not respond to the Department's request for information, the Department has concluded that the PRC–wide entity has failed to cooperate to the best of its ability. Therefore, the Department preliminarily finds that, in selecting from among the facts available, an adverse inference is appropriate.

Section 776(b) of the Act authorizes the Department to use, as adverse facts available (''AFA''): (1) information derived from the petition; (2) the final determination from the LTFV

[4] *See Notice of Preliminary Determination of Sales at Less than Fair Value and Postponement of Final Determination : Structural Steel Beams from the People's Republic of China*, 66 FR 67197 (December 28, 2008) (unchanged in *Notice of Final Determination of Sales at Less than Fair Value : Structural Steel Beams from the People's Republic of China*, 67 FR 35479 (May 20, 2002)), stating ''The petitioners in this case argue that, because Maanshan is 63 percent owned by a holding company which is, in turn, wholly owned by the Anhui provincial government, and because certain managers of the holding company also serve on the board of directors of Maanshan, the respondent is ineligible for a separate rate due to potential government control. However, the petitioners have not submitted any specific evidence indicating that the conditions for de facto control exist. As stated in the *Silicon Carbide*, 59 FR at 22587, ownership of the company by a state-owned enterprise does not require the application of a single rate. Therefore, based on the information provided, we preliminarily determine that there is an absence of *de facto* governmental control of Maanshan's export functions. Consequently, we preliminarily determine that the respondent has met the criteria for the application of a separate rate.''

[5] The Department received only 9 timely responses to the requests for Q&V information that it sent to 65 potential exporters identified in the petition.

investigation; (3) a previous administrative review; or (4) any other information placed on the record. In selecting a rate for AFA, the Department selects one that is sufficiently adverse ''as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.'' *See Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan*, 63 FR 8909 (February 23, 1998). It is the Department's practice to select, as AFA, the higher of: (a) the highest margin alleged in the petition, or (b) the highest calculated rate for any respondent in the investigation. *See Final Determination of Sales at Less Than Fair Value: Certain Cold–Rolled Flat–Rolled Carbon Quality Steel Products From the People's Republic of China*, 65 FR 34660 (May 31, 2000) and accompanying Issues and Decisions Memorandum at Facts Available. Here, we assigned the PRC–wide entity the dumping margin calculated for Shanghai Metals, which exceeds the highest margin alleged in the petition and is the highest rate calculated in this investigation. Pursuant to section 776(c) of the Act, we do not need to corroborate this rate because it is based on information obtained during the course of this investigation rather than secondary information. *See also SAA* at 870. The PRC–wide dumping margin applies to all entries of the merchandise under investigation except for entries of subject merchandise from Benxi, Huludao Pipe, Pangang, Shanghai Metals, Tianjin, and Jiangsu Yulong.

Fair Value Comparisons

To determine whether Huludao Pipe or Shanghai Metals sold welded line pipe to the United States at LTFV, we compared the weighted–average export price (''EP'') of the welded line pipe to the NV of welded line pipe, as described in the ''U.S. Price'' and ''Normal Value'' sections of this notice.

U.S. Price

In accordance with section 772(a) of the Act, for both Huludao Pipe and Shanghai Metals, we based the U.S. price of sales on EP because the first sale to unaffiliated purchasers was made prior to importation and the use of constructed export price was not otherwise warranted. In accordance with section 772(c) of the Act, we calculated EP for Huludao Pipe by deducting the following expenses from the starting price (gross unit price) charged to the first unaffiliated customer in the United States: foreign movement expenses, international freight, foreign warehousing, and foreign brokerage and handling expenses. For Shanghai Metals, we calculated EP by deducting foreign movement expenses and foreign brokerage and handling expenses from the starting price charged to the first unaffiliated customer in the United States.

We based these movement expenses on surrogate values where the service was purchased from a PRC company. For details regarding our EP calculation, *see* Analysis Memoranda for Huludao Pipe and Shanghai Metals, dated October 30, 2008.

Normal Value

In accordance with section 773(c) of the Act, we constructed NV from the factors of production employed by the respondents to manufacture subject merchandise during the POI. Specifically, we calculated NV by adding together the value of the factors of production, general expenses, profit, and packing costs. We valued the factors of production using prices and financial statements from the surrogate country, India. In selecting surrogate values, we followed, to the extent practicable, the Department's practice of choosing values which are non–export average values, contemporaneous with, or closest in time to, the POI, product–specific, and tax–exclusive. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam*, 69 FR 42672, 42682 (July 16, 2004), unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam*, 69 FR 71005 (December 8, 2004). We also considered the quality of the source of surrogate information in selecting surrogate values.

We valued material inputs and packing by multiplying the amount of the factor consumed in producing subject merchandise by the average unit value of the factor. We derived the average unit value of the factor from Indian import statistics. In addition, we added freight costs to the surrogate costs that we calculated for material inputs. We calculated freight costs by multiplying surrogate freight rates by the shorter of the reported distance from the domestic supplier to the factory that produced the subject merchandise or the distance from the nearest seaport to the factory that produced the subject merchandise, as appropriate. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp. v. United States*, 117 F. 3d 1401, 1407–08 (Fed. Cir. 1997). Where we could only obtain surrogate values that were not contemporaneous with the POI, we inflated (or deflated) the surrogate values using the Indian Wholesale Price Index (''WPI'') as published in the International Financial Statistics of the International Monetary Fund.

Further, in calculating surrogate values from Indian imports, we disregarded imports from Indonesia, South Korea, and Thailand because in other proceedings the Department found that these countries maintain broadly available, non–industry-specific export subsidies. Therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China*, 69 FR 20594 (April 16, 2004) and accompanying Issues and Decision Memorandum at Comment 7.[6] Thus, we have not used prices from these countries in calculating the Indian import–based surrogate values.

We valued raw materials, scrap, and packing materials using Indian import statistics. *See* the memoranda to the File regarding ''Investigation of Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Surrogate Values Memorandum'' for Huludao Pipe and Shanghai Metals, dated concurrently with this notice (''Surrogate Values Memorandum''). Although the Petitioners requested that the Department value the steel input using data from the India Joint Plant Committee (''JPC'')[7] the Department has not used these data. The footnotes to the JPC price sheets that were provided by the petitioners state that ''{a}ll prices are inclusive of Excise Duty & Sales/Vat Tax.''[8] As noted above, the Department prefers to value factors of production using tax–exclusive prices. While Petitioners have provided tax rates used by the Department in other antidumping cases to adjust JPC prices for wire rod,

[6] In addition, we note that legislative history explains that the Department is not required to conduct a formal investigation to ensure that such prices are not subsidized. *See* H.R. Rep. 100-576 at 590 (1988). As such, it is the Department's practice to base its decision on information that is available to it at the time it makes its determination.

[7] The JPC is a joint industry/government board that monitors Indian steel prices.

[8] *See* the submission from U.S. Steel and Maverick regarding surrogate values, dated September 2, 2008, at Exhibit 1.

they have not provided information demonstrating that these rates apply to the steel products for which they submitted JPC prices. Moreover, the JPC data are not as detailed as the World Trade Atlas (''WTA'') data. The WTA data include steel prices for several width ranges that cover all of the widths of steel used by both respondents.[9] On the other hand, there is no information in the JPC data regarding steel width. Thus, it is not clear whether the JPC prices cover all of the widths of steel used by the respondents. Also, the WTA data include steel prices for various thickness ranges that cover all of the steel thicknesses used by the respondents. JPC data, however, include prices for only a limited number of thicknesses of steel which do not include all of thicknesses of steel used by the respondents.[10] Furthermore, the WTA data include separate prices for different types and forms of steel (*e.g.*, stainless, clad, pickled, in coils, not in coils), whereas it is not clear whether the hot–rolled steel coil and steel plate categories listed in JPC data exclude the types and forms of steel not used by the respondents. The additional details in the WTA data allow the Department to select surrogate values more specific to the steel input used by the respondents. Therefore, we valued the steel input using WTA data. For further detail, *see* Surrogate Values Memorandum.

We valued electricity using price data for small, medium, and large industries, as published by the Central Electricity Authority of the Government of India in its publication titled *Electricity Tariff & Duty and Average Rates of Electricity Supply in India*, dated July 2006. These electricity rates represent actual country–wide, publicly–available information on tax–exclusive electricity rates charged to industries in India. Since the rates are not contemporaneous with the POI, we inflated the values using the WPI. *See* Surrogate Values Memorandum at Attachment IV.

We valued water using data from the Maharashtra Industrial Development Corporation (www.midcindia.org) because it includes a wide range of industrial water tariffs. This source provides 386 industrial water rates within the Maharashtra province from June 2003, 193 for the ''inside industrial areas'' usage category, and 193 for the ''outside industrial areas'' usage category. We averaged the 386 industrial water rates and because this averaged rate was not contemporaneous with the POI, we inflated the averaged rate using the WPI. *See* Surrogate Values Memorandum.

Consistent with 19 CFR 351.408(c)(3), we valued direct, indirect, and packing labor, using the most recently calculated regression–based wage rate, which relies on 2005 data. This wage rate can be found on the Department's website on Import Administration's home page. *See* Expected Wages of Selected NME Countries (revised May 2008) (available at http://ia.ita.doc.gov/wages/index.html). The source of these wage rate data is the International Labour Organization, Geneva, Labour Statistics Database Chapter 5B: Wages in Manufacturing. Since this regression–based wage rate does not separate the labor rates into different skill levels or types of labor, we have applied the same wage rate to all skill levels and types of labor reported by Huludao and Shanghai Metals. *See* Surrogate Values Memorandum.

We valued truck freight expenses using a per–unit average rate calculated from data on the following web site: http://www.infobanc.com/logistics/logtruck.htm. The logistics section of this website contains inland freight truck rates between many large Indian cities. Since this value is not contemporaneous with the POI, we deflated the rate using the WPI. *See* Surrogate Values Memorandum at Attachment VI.

We valued brokerage and handling using a simple average of the brokerage and handling costs that were reported in public submissions that were filed in three antidumping duty cases. Specifically, we averaged the public brokerage and handling expenses reported by: (1) Agro Dutch Industries Ltd. in the antidumping duty administrative review of certain preserved mushrooms from India, (2) Kejirwal Paper Ltd. in the less than fair value investigation of certain lined paper products from India, and (3) Essar Steel in the antidumping duty administrative review of hot–rolled carbon steel flat products from India. *See Certain Preserved Mushrooms From India: Final Results of Antidumping Duty Administrative Review*, 71 FR 10646 (March 2, 2006); *see also, Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances in Part: Certain Lined Paper Products From India*, 71 FR 19706 (April 17, 2006), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value, and Negative Determination of Critical Circumstances: Certain Lined Paper Products from India*, 71 FR 45012 (August 8, 2006), and *Certain Hot–Rolled Carbon Steel Flat Products From India: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 2018, 2021 (January 12, 2006) (unchanged in *Certain Hot–Rolled Carbon Steel Flat Products From India: Final Results of Antidumping Administrative Review*, 71 FR 40694 (July 18, 2006). We inflated the brokerage and handling rate using the appropriate WPI inflator. *See* Surrogate Values Memorandum.

We valued warehousing using rates obtained from the Board of Jawaharlal Nehru Port Trust's website (http://www.jnport.gov.in/CMSPage.aspx?PageID=27), which is a source used in the antidumping duty investigation of pneumatic off–the-road tires from the PRC. *See Certain New Pneumatic Off–the-Road Tires From the People's Republic of China: Notice of Amended Final Affirmative Determination of Sales at Less Than Fair Value and Antidumping Duty Order*, 73 FR 51624 (Sept. 4, 2008) and accompanying issues and decision memorandum at Comment 26. *See also* Surrogate Values Memorandum.

We valued international freight using rate quotes from Maersk Sealand (''Maersk''), a market–economy shipper. *See* Surrogate Values Memorandum.

We valued factory overhead, selling, general, and administrative (''SG&A'') expenses, and profit, using the financial statements of Jindal Saw Ltd. (''Jindal SAW'') and Bihar Tubes Limited (''Bihar''). *See* Surrogate Values Memorandum. Huludao Pipe submitted the 2006–2007 financial statements of Zenith Birla (India) Limited (''Zenith'') and Bihar while the Petitioners submitted the 2006–2007 financial statements of Jindal SAW and the 2007–2008 financial statements TATA Steel Limited (''TATA'').

The Department did not rely upon the financial statements for Zenith because the 2006–2007 statements identify receipt of subsidies under the Duty Entitlement Pass Book scheme, which has been found by the Department to provide a countervailable subsidy. *See, e.g., Certain Iron–Metal Castings From India: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review*, 64 FR 61592 (November 12, 1999) (unchanged in final results).

In *Crawfish from the PRC*, the Department discussed its practice with

[9] *See* Shanghai Metal's September 8, 2008, response at 12 and 33 and Huludao Pipe's August 27, 2008, response at 14 for the range of widths of the steel purchased. The WTA provides prices for steel of a width of 600mm or more and under 600 mm.

[10] *See* Shanghai Metal's October 27, 2008, response at 6 and Huludao Pipe's October 27, 2008, response at 5 for a list of the thicknesses of the steel used by the respondents.

respect to financial statements that contain evidence of subsidization:

> {T}he statute directs Commerce to base the valuation of the factors of production on ''the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate . . . .'' Section 773(c)(1) of the Act. Moreover, in valuing such factors, Congress further directed Commerce to ''avoid using any prices which it has reason to believe or suspect may be dumped or subsidized prices.'' Omnibus Trade and Competitiveness Act of 1988, H.R. Rep. No. 576, 100 nth Cong., 2 nd Sess., at 590–91 (1988). The Department calculates the financial ratios based on financial statements of companies producing comparable merchandise from the surrogate country, some of which may contain evidence of subsidization. However, where the Department has a reason to believe or suspect that the company may have received subsidies, the Department may consider that the financial ratios derived from that company's financial statements are less representative of the financial experience of that company or the relevant industry than the ratios derived from financial statements that do not contain evidence of subsidization. Consequently, {those statements that appear to reflect subsidies} do not constitute the best available information to value the surrogate financial ratios.[11]

Moreover, the Department did not rely upon the financial statements of TATA because TATA uses a production process different from those employed by the respondents. It is the Department's practice not to use financial statements of a company using a production process different from that employed by a respondent, when other financial statements are available for companies employing a production process similar to that employed by a respondent. *See Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 70 FR 34082 (June 13, 2005) at Comment 5.

Given the record information regarding Zenith's receipt of subsidies, and TATA's product process, as well as the fact that we have other acceptable financial statements to use as surrogates,[12] we have not considered the financial data from these two companies in our financial ratio calculations. Moreover, given both the fact that we have not found either Bihar's or Jindal SAW's financial statements to be clearly preferable in this case, and the Department's preference to use multiple financial statements when they are not distortive or otherwise unreliable, we have determined that these financial statements represent the best information on the record with which to value financial ratios.[13]

In accordance with 19 CFR 351.301(c)(3)(i), for the final determination in an antidumping duty investigation, interested parties may submit publicly available information with which to value factors of production within 40 days after the date of publication of the preliminary determination.

Currency Conversion

We made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 782(i)(1) of the Act, we intend to verify the information upon which we will rely in making our final determination.

Combination Rates

In the *Initiation Notice*, the Department stated that it would calculate combination rates for certain respondents that are eligible for a separate rate in this investigation. *See Initiation Notice*. This change in practice is described in *Policy Bulletin 05.1*:

> {w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non–investigated firms receiving the weighted–average of the individually calculated rates. This practice is referred to as the application of ''combination rates'' because such rates apply to specific combinations of exporters and one or more producers. The cash–deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question and produced by a firm that supplied the exporter during the period of investigation.*See Policy Bulletin 05.1*, ''Separate Rates Practice and Application of Combination Rates in Antidumping Investigations Involving Non–Market Economy Countries,'' available at http://ia.ita.doc.gov/.

Preliminary Determination

The weighted–average dumping margins are as follows:

Exporter & Producer	Weighted–Average Margin
Huludao Steel Pipe Industrial Co., Ltd./.	
Huludao City Steel Pipe Industrial Co., Ltd.	67.83%
Produced by: Huludao Steel Pipe Industrial Co., Ltd./ Huludao City Steel Pipe Industrial Co., Ltd..	
Shanghai Metals & Minerals Import & Export Corp. d/b/a Shanghai Minmetals Materials & Products Corp.	81.52%
Produced by: Huludao Steel Pipe Industrial Co. Ltd.; Benxi Northern Pipes Co. Ltd..	
Benxi Northern Pipes Co., Ltd.	74.68%
Produced by: Benxi Northern Pipes Co., Ltd.; Tianjin Lianzhong Steel Pipe Co., Ltd..	
Pangang Group Beihai Steel Pipe Corporation	74.68%

[11] *See Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results and Rescission, In Part, of 2004/2005 Antidumping Duty Administrative and New Shipper Reviews*, 72 FR 19174 (April 17, 2007) and the accompanying Issues and Decision Memorandum at Comment 1.

[12] Although Jindal SAW Ltd.'s financial statement listed ''export benefits/government grants receivable,'' the Department has insufficient information to determine whether these items relate to programs that have been countervailed.

[13] See, e.g., *Folding Metal Tables and Chairs from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 72 FR 71355 (December 17, 2007) and accompanying Issues and Decision Memorandum at Comment 1c and *Final Results of New Shipper Review: Certain Preserved Mushrooms From the People's Republic of China*, 66 FR 45006 (August 27, 2001), and accompanying Issues and Decision Memorandum at Comment 1.

Exporter & Producer	Weighted–Average Margin
Produced by: Pangang Group Beihai Steel Pipe Corporation.	
Jiangsu Yulong Steel Pipe Co., Ltd.	74.68%
Produced by: Jiangsu Yulong Steel Pipe Co., Ltd..	
Tianjin Xingyuda Import and Export Co., Ltd.	74.68%
Produced by: Tianjin Lifengyuanda Steel Pipe Group Co., Ltd..	
PRC–Wide Rate	81.52%

Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

Suspension of Liquidation

In accordance with section 733(d) of the Act, we will instruct U.S. Customs and Border protection (''CBP'') to suspend liquidation of all entries of welded line pipe from the PRC as described in the ''Scope of Investigation'' section, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted–average amount by which the normal value exceeds U.S. price, as follows: (1) the rate for the exporter/producer combinations listed in the chart above will be the rate we have determined in this preliminary determination; (2) for all PRC exporters of subject merchandise which have not received their own rate, the cash–deposit rate will be the PRC–wide rate; and (3) for all non–PRC exporters of subject merchandise which have not received their own rate, the cash–deposit rate will be the rate applicable to the PRC exporter/producer combination that supplied that non–PRC exporter. These suspension–of-liquidation instructions will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary affirmative determination of sales at LTFV. Section 735(b)(2) of the Act requires the ITC to make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of welded line pipe, or sales (or the likelihood of sales) for importation, of the subject merchandise within 45 days of our final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than seven days after the date the final verification report is issued in this proceeding and rebuttal briefs, limited to issues raised in case briefs, no later than five days after the deadline for submitting case briefs. *See* 19 CFR 351.309(c)(1)(i) and 19 CFR 351.309(d)(1). A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes.

In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. If a request for a hearing is made, we intend to hold the hearing three days after the deadline of submission of rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days after the date of publication of this notice. *See* 19 CFR 351.310(c). Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. At the hearing, each party may make an affirmative presentation only on issues raised in that party's case brief and may make rebuttal presentations only on arguments included in that party's rebuttal brief.

Postponement of Final Determination and Extension of Provisional Measures

Pursuant to section 735(a)(2) of the Act, on October 3, 2008, Shanghai Metals requested that in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination by 60 days. At the same time, Shanghai Metals agreed that the Department may extend the application of the provisional measures prescribed under 19 CFR 351.210(e)(2) from a 4-month period to a 6-month period. In accordance with section 733(d) of the Act and 19 CFR 351.210(b), we are granting the request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register** because: (1) our preliminary determination is affirmative, (2) the requesting exporters account for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist. Suspension of liquidation will be extended accordingly.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: October 30, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–26503 Filed 11–5–08; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

(A–580–861)

Preliminary Determination of Sales at Less Than Fair Value and Postponement of the Final Determination: Certain Circular Welded Carbon Quality Steel Line Pipe from the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 6, 2008.

SUMMARY: The U.S. Department of Commerce (the Department) preliminarily determines that certain circular welded carbon quality steel line pipe (welded line pipe) from the Republic of Korea (Korea) is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act). The estimated margins of sales at LTFV are listed in the ''Suspension of Liquidation'' section of this notice. Interested parties are invited to comment on this preliminary determination in accordance with the

time frame explained in the ''Public Comment'' section of this notice.

FOR FURTHER INFORMATION CONTACT: Patrick Edwards (Hyundai HYSCO) or Dena Crossland (SeAH Steel Corporation), AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–8029 or (202) 482–3362, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 23, 2008, the Department initiated the antidumping duty investigation of welded line pipe from Korea. *See Certain Circular Welded Carbon Quality Steel Line Pipe from the Republic of Korea and the People's Republic of China: Initiation of Antidumping Duty Investigations*, 73 FR 23188 (April 29, 2008) (*Initiation Notice*). The petitioners in this investigation are United States Steel Corporation (U.S. Steel), Maverick Tube Corporation (Maverick), Tex–Tube Company, and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, and AFL–CIO-CLC (collectively, petitioners).

The Department set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments withinendar days from the date of signature of the *Initiation Notice* (*i.e.*, May 13, 2008). *See Initiation Notice*, 73 FR at 23189. On May 13, 2008, Wheatland Tube Company, a domestic interested party, submitted comments on the scope.

On June 3, 2008, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that imports of welded line pipe from Korea and the People's Republic of China are materially injuring or threatening with material injury the U.S. industry and the ITC notified the Department of its findings. *See Certain Circular Welded Carbon Quality Steel Line Pipe From China and Korea: 701 TA 455 and 731 TA 1149 1150 (Preliminary)*, 73 FR 31712 (June 3, 2008).

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. In their petition, petitioners identified four potential Korean respondents. *See* Petitions for the Imposition of Antidumping and Countervailing Duties: Certain Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China and the Republic of Korea, dated April 3, 2008, Vol. I (Petition), at Exhibit 6b. In the *Initiation Notice*, the Department stated that it expected to determine respondents based on U.S. Customs and Border Protection (CBP) data of U.S. imports of welded line pipe from Korea. On April 30, 2008, we invited interested parties to provide comments on a respondent–selection methodology. As an attachment to the April 30, 2008, letter, the Department released an electronic version of the relevant CBP data to eligible parties under administrative protective order (APO). On May 9, 2008, the Department received comments from Maverick and U.S. Steel. Additionally, we received comments from Korean producers/exporters, Hyundai HYSCO (HYSCO), Husteel Co., Ltd. (Husteel), and SeAH Steel Corporation (SeAH).

The Department determined that it was not practicable to examine each known exporter/producer of the subject merchandise, as provided in section 777A(c)(1) of the Act. Based on CBP data and interested parties' comments, the Department selected two companies, HYSCO and SeAH, as mandatory respondents pursuant to section 777A(c)(2)(1)(B) of the Act, because these two companies accounted for the largest volume of sales of subject merchandise. *See* Memorandum to Deputy Assistant Secretary Stephen J. Claeys, titled ''Antidumping Duty Investigation on Certain Circular Welded Carbon Quality Steel Line Pipe from the Republic of Korea (A–580–861): Respondent Selection,'' dated May 29, 2008 (Respondent Selection Memorandum). We issued antidumping duty questionnaires to HYSCO and SeAH on May 29, 2008.

HYSCO

The Department received the section A questionnaire response (Section A Response), and the section B and C questionnaire responses (Section B and C Responses), from HYSCO on July 3, 2008, and July 17, 2008, respectively. Petitioners filed comments on HYSCO's section A through C questionnaire responses on August 5, 2008, and the Department subsequently issued a supplemental questionnaire regarding HYSCO's section A through C questionnaire responses on August 6, 2008.

On August 26, 2008, based on an allegation timely filed by petitioners, the Department initiated a sales–below-cost investigation for HYSCO, finding reasonable grounds to believe that HYSCO made comparison market sales of welded line pipe at prices below its cost of production (COP). *See* ''Cost of Production Analysis'' section below for further information. Consequently, the Department requested in a letter dated August 27, 2008, that HYSCO respond to section D of the Department's antidumping duty questionnaire.

HYSCO submitted its response to the Department's supplemental questionnaire on September 3, 2008 (Supplemental Response). On September 11, 2008, the Department issued a second supplemental questionnaire to HYSCO regarding its section A through C supplemental questionnaire responses. HYSCO filed its response to the second supplemental questionnaire on September 24, 2008 (Second Supplemental Response), concurrent with its section D questionnaire response (Section D Response).

On October 1, 2008, the Department issued a third supplemental questionnaire to HYSCO concerning its sections A through C sales responses. On October 6, 2008, the Department issued a supplemental COP questionnaire to HYSCO concerning its Section D Response. HYSCO filed its third supplemental questionnaire response on October 7, 2008 (Third Supplemental Response). On October 14, 2008, petitioners submitted comments for the Department's consideration prior to the preliminary determination. *See* Letter from United States Steel Corporation, dated October 14, 2008. On October 17, 2008, HYSCO submitted revised sales and cost data due to errors it discovered while preparing its response to the Department's supplemental COP questionnaire. On October 20, 2008, the Department granted a partial request for extension for HYSCO to respond to certain aspects of the Department's supplemental cost questionnaire. *See* HYSCO's Extension Request for Supplemental D Questionnaire, dated October 16, 2008. On October 20, 2008, the Department received HYSCO's initial response to the Department's supplemental cost questionnaire. On October 22, 2008, the Department received comments from HYSCO responding to petitioners October 14, 2008, comments for the preliminary determination. HYSCO filed the remainder of its response to the Department's supplemental cost questionnaire on October 27, 2008.

SEAH

The Department received SeAH's section A questionnaire response, and the section B and C questionnaire responses, from SeAH on July 3, 2008, and July 18, 2008, respectively (Section

A Response; Section B and C Responses). Petitioners filed comments on SeAH's Section A Response, and its Section B and C Responses on July 22, 2008, and July 29, 2008, respectively. The Department subsequently issued a supplemental questionnaire regarding SeAH's section A through C questionnaire responses on August 5, 2008. On August 26, 2008, based on an allegation timely filed by petitioners, the Department initiated a sales–below-cost investigation for SeAH, finding reasonable grounds to believe that SeAH made comparison market sales of welded line pipe at prices below its COP. *See* ''Cost of Production Analysis'' section below for further information. Consequently, the Department requested in a letter dated August 27, 2008, that SeAH respond to section D of the Department's antidumping duty questionnaire.

SeAH replied to the Department's supplemental questionnaire on August 27, 2008 (Supplemental Response). Petitioners filed comments on SeAH's section A through C supplemental questionnaire responses on September 9, 2008, and the Department issued a second supplemental questionnaire to SeAH regarding its section A through C questionnaire supplemental responses on September 12, 2008. SeAH filed its response to the second supplemental questionnaire on September 23, 2008 (Second Supplemental Response). On September 24, 2008, SeAH filed its response to the Department's section D questionnaire (Section D Response). On October 6, 2008, the Department issued a supplemental cost questionnaire to SeAH concerning its section D Response. On October 14, 2008, the Department received SeAH's response to the Department's supplemental cost questionnaire (Supplemental Cost Response). On October 17, 2008, the Department issued a second supplemental cost questionnaire to SeAH concerning its Supplemental Cost Response. On October 21, 2008, the Department received SeAH's response to the Department's second supplemental cost questionnaire (Second Supplemental Cost Response).

Targeted Dumping Allegations

On September 30, 2008, petitioners (*i.e.*, U.S. Steel and Maverick) timely filed with the Department separate allegations of targeted dumping for both HYSCO and SeAH. Upon review of petitioners' allegations, the Department determined that further information was needed in order to adequately analyze the targeted dumping allegations for HYSCO and SeAH. The Department issued supplemental questionnaires to petitioners on October 14, 2008, and October 21, 2008, regarding HYSCO and SeAH, respectively, requesting they address deficiencies identified by the Department. *See* Letters from Angelica L. Mendoza, Program Manager, to U.S. Steel and Maverick, dated October 14, 2008, and October 21, 2008, respectively. Because there was a need for substantative supplemental information regarding the allegation for HYSCO, we do not have a sufficient basis for making a finding of targeted dumping with respect to HYSCO prior to the October 30, 2008, deadline for issuance of the preliminary determination. We intend to address the allegation for HYSCO in full upon receipt of a satisfactory response by petitioner U.S. Steel to our request for additional information. However, after reviewing petitioner Maverick's supplemental questionnaire response, we have accepted Maverick's targeted dumping allegation with respect to SeAH. *See* ''Analysis of Targeted Dumping Allegation for SeAH'' section below for further description.

Postponement of Preliminary Determination

On August 12, 2008, petitioners requested that the Department postpone the preliminary determination by 50 days. The Department published an extension notice on August 29, 2008, which set the new deadline for the preliminary determination at October 30, 2008. *See Certain Circular Welded Carbon Quality Steel Line Pipe from the Republic of Korea and the People's Republic of China: Postponement of Preliminary Determination of Antidumping Duty Investigations*, 73 FR 50941 (August 29, 2008).

Analysis of Targeted Dumping Allegation for SeAH

As noted above, petitioner Maverick, submitted an allegation of targeted dumping with respect to SeAH on October 3, 2008. *See* section 777A(d)(1)(B) of the Act. In its allegation, Maverick asserts that there are patterns of constructed export prices (CEPs) for comparable merchandise that differ significantly among purchasers and regions. We note that all of SeAH's U.S. sales are CEP sales. The Department requested additional information and clarification from Maverick with respect to its targeted dumping allegation. *See* Letter from Angelica Mendoza to Maverick, dated October 21, 2008. On October 27, 2008, Maverick provided its response in which it relied on the Department's targeted dumping test utilized in *Tires from the PRC. See Certain New Pneumatic Off–The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485 (July 15, 2008) and accompanying Issues and Decision Memorandum (*Tires from the PRC*) dated July 7, 2008, at Comment 23.B and 23.G.

New Targeted Dumping Test

The statute allows the Department to employ the average–to-transaction methodology if: 1) there is a pattern of export prices that differ significantly among purchasers, regions, or periods of time, and 2) the Department explains why such differences cannot be taken into account using the average–to-average or transaction–to-transaction methodology.[1]

In the recent final determination memorandum in the antidumping investigation of sodium metal from France, the Department applied a new targeted dumping standard and methodology for analyzing targeted dumping allegations.[2]

We conducted customer- and region–targeted dumping analyses for SeAH using the methodology described in the Sodium Metal Final Analysis Memorandum, which was based on the final determinations of the recent *Steel Nails*, *Tires from the PRC*,[3] and *LWTP*[4] targeted dumping test for purposes of the final determination. This is also the test put forward in the Department's *Proposed Methodology for Identifying and Analyzing Targeted Dumping in Antidumping Investigations; Request for Comment*, 73 FR 26371 (May 9, 2008). The Department is currently analyzing

[1] Section 777A(d)(1)(B) of the Act.

[2] *See Sodium Metal from France: Notice of Final Determination of Sales at Less Than Fair Value and Negative Critical Circumstances*, 73 FR 62252, (October 20, 2008) and accompanying Issues and Decision Memorandum at Comments 2 and 3 and the Memorandum to James Terpstra, Program Manager for the Office of AD/CVD Operations, from Dennis McClure and Joy Zhang, Analysts for the Office of AD/CVD Operations, RE: Antidumping Duty Investigation of Sodium Metal from France, Subject: Final Analysis Memorandum for Sales MSSA, dated October 10, 2008 (Sodium Metal Final Analysis Memorandum).

[3] *See Certain Steel Nails from the United Arab Emirates: Notice of Final Determination of Sales at Not Less Than Fair Value*, 73 FR 33985 (June 16, 2008) and accompanying Issues and Decision Memorandum dated June 6, 2008, at Comment 5; *see also*; *Certain Steel Nails from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 33977 (June 16, 2008) and accompanying Issues and Decision Memorandum, dated June 6, 2008, at Comments 3, 5, and 9 (collectively, *Steel Nails*).

[4] *See Lightweight Thermal Paper from Germany: Notice of Final Determination of Sales at Less Than Fair Value*, 73 FR 57326 (October 2, 2008) (*LWTP*).

comments received by interested parties. *See* http://ia.ita.doc.gov/ia–highlights-and–news.html.

The methodology we employed involves a two–stage test: the first stage addresses the pattern requirement, and the second stage addresses the significant difference requirement. All price comparisons have been done on the basis of identical merchandise (*i.e.*, by control number or CONNUM). The test procedures are the same for customer, region, and time period targeted dumping allegations,[5] even though the example given in the general description below applies to customer targeting.

In the first stage of the test, referred to as the ''standard deviation test,'' the Department determined, on an exporter–specific basis, the share of the alleged targeted customer's purchases of subject merchandise (by sales volume) that are at prices more than one standard deviation below the weighted–average price to all customers of that exporter, targeted and non–targeted. We calculated the standard deviation on a product–specific basis (*i.e.*, CONNUM by CONNUM) using the period of investigation–wide average prices (weighted by sales volume) for each alleged targeted customer and each distinct non–targeted customer. If that share did not exceed 33 percent of the total volume of the exporter's sales of subject merchandise to the alleged targeted customer, then the pattern requirement is not met and the Department did not conduct the second stage of the test.

However, if that share exceeded 33 percent of the total volume of the exporter's sales of subject merchandise to the alleged targeted customer, then the pattern requirement is met and the Department proceeded to the second stage of the test. Specifically, the Department examined in the second stage all of the sales of identical merchandise (*i.e.*, by CONNUM) by that exporter to the alleged targeted customer that meet the standard deviation requirement. From those sales, we determined the total volume of sales for which the difference between (i) the sales–weighted-average price to the alleged targeted customer and (ii) the next higher sales–weighted-average price to a non–targeted customer exceeded the average price gap (weighted by sales volume) for the non–targeted group.[6] Each of the price gaps in the non–targeted group was weighted by the combined sales volume associated with the pair of prices to non–targeted customers that make up the price gap. In doing this analysis, the alleged targeted customers were not included in the non–targeted group; each alleged targeted customer's average price was compared to only the average prices to non–targeted customers. If the share of the sales that met this test exceeded five percent of the total sales volume of subject merchandise to the alleged targeted customer,[7] the significant difference requirement was met and the Department determined that customer targeting occurred.

If the Department determined that, for sales to the customer, there was a pattern of prices that differ significantly, we applied the transaction–to-average methodology to any targeted sales and applied the average–to-average methodology to the remaining non–targeted sales.[8] When calculating the weighted–average margin, we combine the margin calculated for the targeted sales with the margin calculated for the non–targeted sales, without offsetting any margins found among the targeted sales.

We based all of our targeted dumping calculations on the U.S. net price determined in our margin program in our Preliminary Calculation Memorandum. *See* Memorandum to the File titled ''Analysis of Data Submitted by SeAH Steel Corporation (SeAH) in the Preliminary Determination of the Antidumping Duty Investigation of Certain Circular Welded Carbon Quality Steel Line Pipe from the Republic of Korea,'' dated October 30, 2008 (SeAH Analysis Memo) on file in the Central Records Unit, Room 1117 of the main Department building.

Results of the Application of the New Targeted Dumping Test

For purposes of this preliminary determination on targeted dumping, we have applied the above–described test to the U.S. sales data reported by SeAH. Our observations and results are discussed in more detail in a separate memorandum placed on the record of this investigation.

We preliminarily determine that there is a pattern of CEPs for comparable merchandise that differ significantly among customers and regions for SeAH. Therefore, we applied the average–to-transaction methodology to the targeted sales by SeAH under 19 CFR 351.414(f)(1)(i). For all other U.S. sales by SeAH (*i.e.*, non–targeted), we have applied the average–to-average methodology for purposes of determining SeAH's overall weighted–average dumping margin.

Comments by Interested Parties

Parties may comment on the Department's overall preliminary determination application of the new targeted dumping test in this proceeding. Consistent with 19 CFR 351.309(c)(2), all comments should be filed in the context of the case and rebuttal briefs. *See* the ''Public Comment'' section below for details regarding the briefing schedule for this investigation.

Period of Investigation

The period of investigation (POI) is April 1, 2007, to March 31, 2008.

Scope of Investigation

The merchandise that is the subject of this investigation is circular welded carbon quality steel pipe of a kind used for oil and gas pipelines (welded line pipe), not more than 406.4 mm (16 inches) in outside diameter, regardless of wall thickness, length, surface finish, end finish or stenciling.

The term ''carbon quality steel'' includes both carbon steel and carbon steel mixed with small amounts of alloying elements that may exceed the individual weight limits for nonalloy steels imposed in the Harmonized Tariff Schedule of the United States (HTSUS). Specifically, the term ''carbon quality'' includes products in which (1) iron predominates by weight over each of the

[5] Petitioners also made a targeted dumping allegation based on region for SeAH in this investigation.

[6] The next higher price is the sales-weighted-average price to the non-targeted group that is above the sales-weighted-average price to the alleged targeted group. For example, if the sales-weighted-average price to the alleged targeted group is $7.95 and the sales-weighted-average prices to the non-targeted group are $8.30, $8.25, and $7.50, we would calculate the difference between $7.95 and $8.25 because this is the next higher price in the non-targeted group above $7.95 (the average price to the targeted group).

[7] For example: If non-targeted A's weighted-average price is $1.00 with a total sales volume of 100 metric tons (MT) and non-targeted B's weighted-average price is $0.95 with a total sales volume of 120 MT, then the difference of $0.05 ($1.00- $0.95) would be weighted by 220 MT (100 MT + 120 MT).

[8] Consistent with 19 CFR 351.414(f)(2), we have limited our application of the average-to-transaction methodology to the targeted sales under 19 CFR 351.414(f)(1)(i). As specified in the preamble to the regulations, the Department will apply the average-to-transaction methodology solely to address the practice of targeting. *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27375 (May 19, 1997). In the preamble, the Department indicated that where the targeting is so widespread that it is administratively impractical to segregate targeted sales prices from the normal pricing behavior of the company, it may be necessary to apply the average-to-transaction methodology to all sales of a particular respondent. In this case, however, we are able to segregate the targeted sales prices, by customer or region, where appropriate, from the normal pricing behavior of the company and, therefore, have limited our application of the average-to-transaction methodology to the sales to the targeted group.

other contained elements, (2) the carbon content is 2 percent or less by weight and (3) none of the elements listed below exceeds the quantity by weight respectively indicated:

(i) 2.00 percent of manganese,
(ii) 2.25 percent of silicon,
(iii) 1.00 percent of copper,
(iv) 0.50 percent of aluminum,
(v) 1.25 percent of chromium,
(vi) 0.30 percent of cobalt,
(vii) 0.40 percent of lead,
(viii) 1.25 percent of nickel,
(ix) 0.30 percent of tungsten,
(x) 0.012 percent of boron,
(xi) 0.50 percent of molybdenum,
(xii) 0.15 percent of niobium,
(xiii) 0.41 percent of titanium,
(xiv) 0.15 percent of vanadium, or
(xv) 0.15 percent of zirconium.

Welded line pipe is normally produced to specifications published by the American Petroleum Institute (API) (or comparable foreign specifications) including API A–25, 5LA, 5LB, and X grades from 42 and above, and/or any other proprietary grades or non–graded material. Nevertheless, all pipe meeting the physical description set forth above that is of a kind used in oil and gas pipelines, including all multiple–stenciled pipe with an API line pipe stencil is covered by the scope of this investigation.

The line pipe products that are the subject of this investigation are currently classifiable in the HTSUS under subheadings 7306.19.10.10, 7306.19.10.50, 7306.19.51.10, and 7306.19.51.50. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Model Match

In accordance with section 771(16) of the Act, all products produced by the respondents covered by the description in the ''Scope of Investigation'' section above, and sold in Korea during the POI, are considered to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales.

On April 29, 2008, the Department asked all parties in this investigation and, in the concurrent antidumping duty investigation of welded line pipe from the People's Republic of China, for comments on the appropriate product characteristics for defining individual products. *See Initiation Notice*, 73 FR at 23190. The Department received comments on the model matching methodology from petitioners on May 13, 2008, and rebuttal comments from Korean producer/exporter Husteel and respondent SeAH on May 20, 2008. Petitioners responded to Husteel's and SeAH's rebuttal comments on May 27, 2008. We adjusted our model match criteria based on certain comments from the parties.

We have relied on six criteria to match U.S. sales of subject merchandise to comparison market sales of the foreign like product: epoxy finish, grade, outside diameter, wall thickness, end finish, and surface finish. Where there were no sales of identical merchandise in the comparison market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed above.

Date of Sale

19 CFR 351.401(i) states that the Department normally will use the date of invoice, as recorded in the producer's or exporter's records kept in the ordinary course of business, as the date of sale. The regulations further provide that the Department may use a date other than the date of the invoice if the Secretary is satisfied that a different date better reflects the date on which the material terms of sale are established. *See* 19 CFR 351.401(i).

HYSCO

HYSCO reported the shipment date as the date of sale for all sales in the comparison market, as invoicing occurs subsequent to shipment in HYSCO's ordinary course of trade. *See* HYSCO's Section B Response at B–12. For its U.S. sales, HYSCO reported the earlier of invoice date or shipment date, when applicable. *See* HYSCO's Section C Response at C–10. HYSCO reported in its questionnaire responses that HYSCO invoices its comparison market customers on a monthly basis for all sales made during a given month. As such and as reported by HYSCO, the shipment precedes issuance of the commercial or tax invoice in the comparison market. *Id.*; *see also*, HYSCO's Supplemental Response at S–8 through S–10. Normally, the Department employs invoice date as the date of sale in accordance with 19 CFR 351.401(i). However, it is the Department's practice to use shipment date as the date of sale when shipment date precedes invoice date. *See Certain Cold–Rolled and Corrosion–Resistant Carbon Steel Flat Products From Korea: Final Results of Antidumping Duty Administrative Reviews*, 63 FR 13170, 13172–73 (March 18, 1998) (*Corrosion Resistant Steel from Korea*). We therefore find that HYSCO's reporting methodology is in accordance with our practice, as its comparison market sales are invoiced after the date of shipment. *See Stainless Steel Sheet and Strip in Coils from the Republic of Korea: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 18074, 18079–80 (April 10, 2006), unchanged in *Stainless Steel Sheet and Strip in Coils from the Republic of Korea: Final Results and Rescission of Antidumping Duty Administrative Review in Part*, 72 FR 4486 (January 31, 2007) and the accompanying Issues and Decision Memorandum at Comments 4 and 5 (*SSSS from Korea*); *Tires from the PRC*, and the accompanying Issues and Decision Memorandum at Comment 81. We have, therefore, preliminarily determined that shipment date is the appropriate date to use as the date of sale for HYSCO's comparison market sales as all of its sales in Korea were invoiced subsequent to the date of shipment.

The circumstances regarding the date of sale of HYSCO's sales to the United States are similar to those of its comparison market sales. HYSCO reported both export price (EP) and CEP sales to the United States. For its EP sales, which HYSCO ships through an unaffiliated trading company located in Korea, HYSCO has reported the earlier of either shipment date or the date of invoice (where the invoice date is the date of issuance of HYSCO's invoice to the Korean trading company). *See* HYSCO's Section C Response at C–10. For its CEP sales, made through its U.S. affiliate, Hyundai HYSCO USA, Inc. (HHU), HYSCO has also reported the earlier of shipment date or the date of invoice as the appropriate date of sale, where applicable, and where the date of invoice is the date on which the U.S. affiliate issues the invoice to the unaffiliated customer. *Id.* HYSCO reported in its questionnaire responses that certain material terms of its U.S. sales may continue to be negotiated up until the issuance of the commercial invoice. Our review of HYSCO's sales data indicates that, in some cases, the reported shipment date precedes the reported invoice date. In such circumstances, the Department normally uses the earlier of invoice date or shipment date as the date of sale. *Id. See also*, HYSCO Supplemental Response at S–8 through S–10. We find that HYSCO's reporting methodology is consistent with our practice. *See*, *e.g.*, *Corrosion Resistant Steel from Korea*, *SSSS from Korea* and *Tires from the PRC*.

Therefore, and similar to the circumstances of HYSCO's comparison market sales, we have preliminarily determined that in instances where the

sales invoice was issued after the date of shipment for HYSCO's U.S. sales, we will use the shipment date as the appropriate date of sale, as the Department's practice is to not use a date of sale after the date of shipment. *See*, *e.g.*, *Corrosion Resistant Steel from Korea*, *SSSS from Korea* and *Tires from the PRC*. In instances where the invoice was issued (where the terms of sale are finalized) prior to the date of shipment, we will use the invoice date as the correct date of sale. For a further discussion of this issue, *see* Memorandum to the File titled ''Analysis of Data Submitted by Hyundai HYSCO (HYSCO) in the Preliminary Determination of the Antidumping Duty Investigation of Certain Circular Welded Carbon Quality Steel Line Pipe from the Republic of Korea,'' dated October 30, 2008 (HYSCO Analysis Memo).

SEAH

As stated above, 19 CFR 351.401(i) stipulates that the Department normally will use the date of invoice, as recorded in the producer's or exporter's records kept in the ordinary course of business, as the date of sale. However, if shipment date precedes invoice date, the Department's practice has been to use the shipment date as the date of sale. *See*, *e.g.*, *Corrosion Resistant Steel from Korea*, *SSSS from Korea* and *Tires from the PRC*.

SeAH reported the date of the shipping invoice, which is issued on the date of shipment, as the date of sale for its comparison market sales. *See* SeAH's Section B and C questionnaire responses at B–12, and SeAH's Supplemental Response at 4 and 5. According to SeAH, the shipping invoice is the first document that is generated for each comparison market sale, once the merchandise has been produced and the actual quantity has been finalized, and the date of the shipping invoice is the date of sale that is recorded in SeAH's financial accounting records. *See* SeAH's Supplemental Response at 4. SeAH stated that the quantity often changes between the time of the order and the time of shipment, when the shipping invoice is issued, and provided a comparison table and sample sales documents to demonstrate the quantity changes that transpired during the POI. *See* SeAH's Supplemental Response at Exhibit A–37.

For its U.S. sales, SeAH sold through two affiliated companies in the United States, Pusan Pipe America (PPA) and State Pipe and Supply (State Pipe), and reported that for State Pipe, the subject merchandise was inventoried in the United States prior to sale to the unaffiliated U.S. customer. For sales through PPA (*i.e.*, back–to-back transactions), SeAH reported the shipment date, as listed in the bill of lading, as the date of sale, as it preceded the date of PPA's invoice to the unaffiliated U.S. customer for all transactions. *See* SeAH's Section A Response at 11, and SeAH's Section B and C Responses at C–11 and C–12. For sales through State Pipe, SeAH reported the date of State Pipe's invoice to the unaffiliated U.S. customer, which is the same date as the shipment date from State Pipe to the unaffiliated U.S. customer, because the subject merchandise was inventoried in the United States prior to sale to the customer. *Id*. SeAH provided a comparison table and sample documents to demonstrate that there were changes between the ordered quantity and the shipped quantity during the POI that were outside the normal tolerance level. *See* SeAH's Supplemental Response at Exhibit A–37.

Based on SeAH's responses, and having no record evidence that would indicate otherwise, we preliminarily determine that for SeAH's comparison market sales, the shipping invoice date, which is the same as the date of shipment, is the appropriate date to use as the date of sale because this is the date that is recorded in SeAH's records and it is the date when the material terms of sale (*i.e.*, price and quantity) are finalized. For SeAH's U.S. sales through State Pipe, we have preliminarily determined that the date of State Pipe's invoice to the unaffiliated U.S. customer is the appropriate date to use as the date of sale because this is the date when the material terms of sale are finalized pursuant to 19 CFR 351.401(i). For SeAH's U.S. sales through PPA, we have preliminarily determined that the date of shipment from SeAH is the appropriate date of sale, in accordance with the Department's practice in *Corrosion Resistant Steel from Korea*, *SSSS from Korea* and *Tires from the PRC*, because the material terms of sale were set prior to the date of PPA's invoice to the unaffiliated U.S. customer. For further discussion of this issue, *see* SeAH Analysis Memo.

Fair Value Comparisons

To determine whether sales of welded line pipe from Korea were made in the United States at less than normal value (NV), we compared the EP or CEP to the NV, as described in the ''Export Price and Constructed Export Price'' and ''Normal Value'' sections below. In accordance with section 777A(d)(1) of the Act, we calculated the weighted–average prices for NV and compared these to the weighted–average EP (and CEP), when appropriate.

Export Price and Constructed Export Price

For the price to the United States, we used, as appropriate, EP or CEP, in accordance with sections 772(a) and (b) of the Act. Pursuant to section 772(a) of the Act, we used the EP methodology when the merchandise was sold by the producer or exporter outside the United States directly to the first unaffiliated purchaser in the United States prior to importation and when CEP was not otherwise warranted based on the facts on the record. In accordance with section 772(b) of the Act, CEP is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d).

We based EP and CEP on the packed prices charged to the first unaffiliated customer in the United States and the applicable terms of sale.

HYSCO

HYSCO classified two types of sales to the United States: 1) direct sales to end–user customers (*i.e.*, EP sales) via an unaffiliated trading company based in Korea; and 2) sales via its U.S. affiliate, HHU, to unaffiliated distributors (*i.e.*, CEP sales). *See* HYSCO's Section A Response at A–6 through A–12. For purposes of this preliminary determination, we have accepted HYSCO's classifications.

For HYSCO's reported EP sales, we based the date of sale on the earlier of either the sales invoice date or the shipment date. We calculated EP based on the packed prices to an unaffiliated trading company located in Korea, through which HYSCO sold merchandise to the United States and had knowledge of the final destination. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act, which included foreign inland freight, foreign brokerage and handling, international freight, marine insurance, U.S. brokerage and handling, and U.S. customs duties. We made further adjustments for direct expenses (credit expenses) in accordance with section 772(c)(2)(A) of the Act.

We calculated CEP based on prices charged to the first unaffiliated U.S. customer after importation. We used the

earlier of either the sales invoice date or the shipment date as the date of sale. We based CEP on the gross unit price from HHU to its unaffiliated U.S. customers. Where applicable and pursuant to sections 772(c)(2)(A) and (d)(1) of the Act, the Department made deductions for movement expenses, which included foreign inland freight, foreign brokerage and handling, brokerage and handling in the United States, international freight, marine insurance and U.S. Customs duties. In accordance with section 772(d)(1) of the Act, we also deducted, where applicable, U.S. direct selling expenses, including credit expenses, U.S. indirect selling expenses, and inventory carrying costs incurred in Korea associated with economic activities in the United States. We also deducted CEP profit in accordance with section 772(d)(3) of the Act. For further discussion, *see* HYSCO Analysis Memo.

SEAH

SeAH's U.S. sales were made by its U.S. affiliates, PPA and State Pipe. We, therefore, based all of SeAH's prices to the United States on CEP. We used shipment date as the date of sale because it preceded the invoice date for SeAH's sales through PPA to the United States. For sales by State Pipe, we relied on the date of State Pipe's invoice to the unaffiliated U.S. customer. When appropriate, we adjusted prices to reflect deductions and/or increases for early payment and other discounts and warranty expenses. In accordance with section 772(c)(2) of the Act, we made deductions, where appropriate, for movement expenses including inland freight, brokerage and handling in the country of manufacture, international freight, marine insurance, U.S. brokerage and handling, U.S. customs duties, U.S. inland freight to the U.S. warehouse, warehousing in the United States, and U.S. inland freight from the U.S. warehouse to the unaffiliated customer in the United States.

For CEP, in accordance with section 772(d)(1) of the Act, when appropriate, we deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including direct selling expenses (*e.g.*, warranty expenses and other direct selling expenses), imputed credit expenses, U.S. indirect selling expenses, and inventory carrying costs incurred in Korea associated with economic activities in the United States. We also deducted from CEP an amount for profit in accordance with sections 772(d)(3) and (f) of the Act. *See* SeAH Analysis Memo.

Normal Value

A. Home Market Viability and Comparison Market Selection

To determine whether there was a sufficient volume of sales in the home market (*i.e.*, Korea) to serve as a viable basis for calculating NV, we compared the respondents' volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise. Pursuant to section 773(a)(1)(B)(I) of the Act, because each respondent had an aggregate volume of home market sales of the foreign like product that was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the respondents' sales of welded line pipe in Korea were sufficient to find the home market as viable for comparison purposes. Accordingly, we calculated NV for HYSCO and SeAH based on sales prices to Korean customers. However, the Department has concerns regarding merchandise HYSCO has reported as the foreign like product in this investigation, which may affect the viability of HYSCO's home market. Specifically, HYSCO has explained in its questionnaire responses that it made sales of secondary merchandise which did not meet the required specification or were defective in nature. HYSCO has reported these sales as sales of the foreign like product subject to this investigation for purposes of establishing normal value. *See* HYSCO's Section B Response at page B–6; HYSCO's Second Supplemental Response at page S–13; and HYSCO's Third Supplemental Response. The Department intends to thoroughly analyze this issue at verification.

B. Arm's–Length Test

HYSCO and SeAH reported sales of the foreign like product to affiliated and unaffiliated customers in the comparison market. The Department calculates NV based on a sale to an affiliated party only if it is satisfied that the price to the affiliated party is comparable to the price at which sales are made to parties not affiliated with the producer or exporter, *i.e.*, sales at ''arm's–length.'' *See* 19 CFR 351.403(c). To test whether these sales were made at arm's–length, we compared the starting prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, discounts and packing. In accordance with the Department's current practice, if the prices charged to an affiliated party were, on average, between 98 and 102 percent of the prices charged to unaffiliated parties for merchandise identical or most similar to that sold to the affiliated party, we considered the sales to be at arm's–length prices and included such sales in the calculation of NV. *See* 19 CFR 351.403(c). Conversely, where sales to the affiliated party did not pass the arm's–length test, all sales to that affiliated party were excluded from the NV calculation. *See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186 (November 15, 2002); *see also*, HYSCO Analysis Memo and SeAH Analysis Memo.

C. Cost of Production Analysis

Based on our analysis of petitioners' allegations, we found that there were reasonable grounds to believe or suspect that HYSCO's and SeAH's sales of welded line pipe in the comparison market were made at prices below their COP. Accordingly, pursuant to section 773(b) of the Act, we initiated sales–below-cost investigations to determine whether these companies had sales that were made at prices below their respective COPs. *See* Memorandum to Richard O. Weible, Director, Office 7, titled ''Petitioner's Allegation of Sales Below the Cost of Production for Hyundai HYSCO (HYSCO),'' dated August 26, 2008; *see also*, Memorandum to Richard O. Weible, Director, Office 7, titled ''Petitioner's Allegation of Sales Below the Cost of Production for SeAH Steel Corporation (SeAH),'' dated August 26, 2008.

1. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated the respondents' COP based on the sum of their costs of materials and conversion for the foreign like product, plus an amount for home market selling expenses, general and administrative expenses (SG&A), interest expenses and packing costs. *See* the ''Test of Comparison Market Sales Prices'' section below for the treatment of comparison market selling expenses.

The Department relied on the COP data submitted by HYSCO and SeAH, in their respective section D questionnaire and supplemental responses for the COP calculation, except for the following instances:

SEAH

During the POI, SeAH purchased carbon steel hot–rolled coil inputs from a home market affiliate. The transfer price paid to the home market affiliate was less than the market price paid to SeAH's unaffiliated supplier. Therefore, for this preliminary determination, we have adjusted SeAH's reported total cost

of manufacturing to reflect the higher market price.

For a complete discussion of the changes made to the cost information submitted by SeAH, *see* Memorandum to Neal M. Halper, Director, Office of Accounting, titled ''Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination SeAH Steel Corporation,'' dated October 30, 2008.

2. Test of Comparison Market Sales Prices

On a product–specific basis, we compared the adjusted weighted–average COP to the comparison market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether the sale prices were below the COP. For purposes of this comparison, we used the COP exclusive of selling and packing expenses. The prices were exclusive of any applicable movement charges, direct and indirect selling expenses, and packing expenses.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below–cost sales of that product because we determined that the below–cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product during the POI were at prices less than COP, we determined that such sales have been made in ''substantial quantities.'' *See* section 773(b)(2)(C) of the Act. Further, the sales were made within an extended period of time, in accordance with section 773(b)(2)(B) of the Act, because we examined below–cost sales occurring during the entire POI. In such cases, because we compared prices to POI–average costs, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

We found that, for specific products, more than 20 percent of HYSCO's and SeAH's sales were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We, therefore, excluded these sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

D. Calculation of Normal Value Based on Comparison Market Prices

HYSCO

We calculated NV based on packed prices to unaffiliated customers in Korea and matched U.S. sales to NV. We used the date of shipment as the appropriate date of sale for HYSCO's comparison market sales. We increased the comparison market starting price, where appropriate, to account for reported interest revenue pursuant to section 773(a)(6)(A) of the Act. We made deductions, where appropriate, for movement expenses, and packing pursuant to section 773(a)(6)(B) of the Act. In addition, we made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise, pursuant to section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411, as well as for differences in circumstances of sale as appropriate (*i.e.*, credit expenses), in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We also made an adjustment, where appropriate, for the CEP offset in accordance with section 773(a)(7)(B) of the Act. *See* ''Level of Trade'' section below. Additionally, we deducted home market packing costs and added U.S. packing costs in accordance with sections 773(a)(6)(A) and (B) of the Act.

SEAH

We based comparison market prices on packed prices to unaffiliated customers in Korea. We adjusted the starting price for movement expenses and packing, pursuant to section 773(a)(6)(B) of the Act. In addition, as SeAH's sales were all CEP sales, for comparisons made to those CEP sales, we only deducted Korean credit expenses from comparison market prices, because U.S. credit expenses were deducted from U.S. price, as noted above and in accordance with section 772(c)(2) of the Act.

When comparing U.S. sales with comparison market sales of similar, but not identical, merchandise, we also made adjustments for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the foreign like product and subject merchandise. *See* 19 CFR 351.411(b).

E. Level of Trade/Constructed Export Price Offset

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP transaction. The LOT in the comparison market is the LOT of the starting–price sales in the comparison market or, when NV is based on CV, the LOT of the sales from which we derive SG&A expenses and profit. With respect to U.S. price for EP transactions, the LOT is also that of the starting–price sale, which is usually from the exporter to the importer. *See* 19 CFR 351.412(c)(i). For CEP, the LOT is that of the constructed sale from the exporter to the affiliated importer. *See* 19 CFR 351.412(c)(ii). *See also Micron Technology, Inc. v. United States*, 243 F.3d 1301, 1314 (Fed. Cir. 2001).

To determine whether comparison market sales are at a different LOT from U.S. sales, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. *See*, *e.g.*, *Notice of Preliminary Determination of Sales at Not Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip from Thailand*, 73 FR 24565 (May 5, 2008) (*PET Film from Thailand*); and *Notice of Preliminary Determination of Sales at Less Than Fair Value: Light–Walled Rectangular Pipe and Tube From Mexico,* 73 FR 5515 (January 30, 2008) (*LWR Pipe from Mexico*). If the comparison market sales are at different LOTs, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, the Department makes an LOT adjustment in accordance with section 773(a)(7)(A) of the Act. *See also LWR Pipe from Mexico* at 5522. For CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the customer. See *PET Film from Thailand* at 24570. We analyze whether different selling activities are performed, and whether any price differences (other than those for which other allowances are made under the Act) are shown to be wholly or partly due to a difference in LOT between the CEP and NV. Under section 773(a)(7)(A) of the Act, we make an upward or downward adjustment to NV for LOT if the difference in LOT involves the performance of different selling activities and is demonstrated to affect price comparability, based on a pattern of consistent price differences between sales at different LOTs in the country in which NV is determined. Id. Finally, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP,

but the data available do not provide an appropriate basis to determine a LOT adjustment, we reduce NV by the amount of indirect selling expenses incurred in the foreign comparison market on sales of the foreign like product, but by no more than the amount of the indirect selling expenses incurred for CEP sales. *See* section 773(a)(7)(B) of the Act (the CEP offset provision) and *LWR Pipe from Mexico* at 5522.

In analyzing differences in selling functions, we determine whether the LOTs identified by the respondent are meaningful. *See Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR at 27371. If the claimed LOTs are the same, we expect that the functions and activities of the seller should be similar. Conversely, if a party claims that LOTs are different for different groups of sales, the functions and activities of the seller should be dissimilar. *See Porcelain–on-Steel Cookware from Mexico: Final Results of Administrative Review*, 65 FR 30068 (May 10, 2000) and accompanying Issues and Decision Memorandum at Comment 6.

HYSCO

HYSCO reported one channel of distribution in the comparison market (*i.e.*, Korea), distinguished by two separate classes of customer: 1) direct sales to unaffiliated distributors and, 2) direct sales to affiliated and unaffiliated end–users. *See* HYSCO's Section A Response at A–11. HYSCO reported its selling functions to both distributors and end–users in the home market as: sales forecasting, strategic/economic planning, personnel training, advertising, sales promotion, packing, order input/processing, direct sales personnel, sales and marketing support, market research, technical assistance, providing warranty services, and arranging freight and delivery. *Id.* at A–12 and Exhibit 6. Specifically, HYSCO reported that it sold directly to its comparison market customers at a single LOT. *Id.* at A–11 through A–12. We examined the selling activities reported for HYSCO's channel of distribution to its customers. Based on record evidence and HYSCO's questionnaire responses, we found that HYSCO's level of selling functions and stages of marketing reported for its comparison market channel of distribution customers did not vary significantly by class of customer (*i.e.*, distributor vs. end–user). Therefore, we preliminarily conclude that the selling functions for the reported channel of distribution and classes of customer in that channel constitute one LOT in the comparison market.

With regard to its sales to the United States, HYSCO reported one EP LOT and one CEP LOT, with a single channel of distribution for each. *See* HYSCO's Section A Response at A–11 through A–13. HYSCO's EP sales to the United States were made through an unaffiliated trading company located in Korea, which sold subject merchandise to unaffiliated distributors in the United States. HYSCO also made CEP sales through its wholly–owned U.S. subsidiary, HHU, to unaffiliated distributors. We preliminarily find that HYSCO has two channels of distribution for its sales of subject merchandise to the United States: EP sales to unaffiliated distributors, and CEP sales to unaffiliated distributors. *Id. See also*, HYSCO's Section A Response at Exhibit A–8.

For EP sales, we examined the selling activities related to each of the selling functions between HYSCO and its unaffiliated trading company in Korea. HYSCO reported its selling functions to the trading company as: sales forecasting, strategic/economic planning, personnel training, advertising, sales promotion, packing, order input/processing, direct sales personnel, sales and marketing support, market research, technical assistance, and providing freight and delivery arrangement to the United States. *See* HYSCO's Section A Response at Exhibit A–6. *See also*, HYSCO's Supplemental Response at S–7.

For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and CEP profit under section 772(d) of the Act. *See Micron Technology Inc. v. United States*, 243 F.3d at 1314–1315. We reviewed the selling functions and services performed by HYSCO on CEP sales to its U.S. affiliate, HHU, as described in its questionnaire responses, after these deductions. We found that HYSCO provides almost no selling functions to its U.S. affiliate in support of the CEP LOT. HYSCO reported that the only services it provided for the CEP sales were logistics for freight and delivery, order input and processing, and direct sales personnel. *See* HYSCO's Section A Response at Exhibit A–6. We then examined the selling functions performed by HYSCO on its EP sales in comparison with the selling functions performed on CEP sales (after the appropriate CEP deductions). We found that HYSCO performs an additional layer of selling functions at a greater frequency on its EP sales which are not performed on its sales to its affiliate. *Id. See also*, HYSCO's Section A Response at A–15 through A–17. Because these additional selling functions are significant, we find that HYSCO's EP sales are at a different LOT than its CEP sales.

We then compared the selling functions HYSCO provided in the comparison market LOT with the selling functions provided to the U.S. EP LOT. On this basis, we determined that the comparison market LOT is almost identical to HYSCO's U.S. EP LOT in the selling functions and stages of marketing that are provided to each market. *See* HYSCO's Section A Response at Exhibit A–6; *see also*, HYSCO's Section A Response at A–15 through A–17. Moreover, we find that the degree to which HYSCO provides these identical selling functions for its customers in both markets to be similar (*i.e.*, the exception being the provision of warranty services in HYSCO's comparison market LOT). *Id.*, *see also*, HYSCO Analysis Memo. It was, therefore, unnecessary to make an LOT adjustment for comparison of HYSCO's comparison market and EP prices.

HYSCO reported that it provided minimal selling functions and services for the CEP LOT and that, therefore, the comparison market LOT is more advanced than the CEP LOT. *See* HYSCO's Section A Response at A–15. Based on our analysis of the channels of distribution and selling functions performed by HYSCO for sales in the comparison market and CEP sales in the U.S. market, we found that the functions provided by HYSCO to its U.S. affiliate are limited to order processing and the arrangement of freight and delivery. *See* HYSCO's Section A Response at Exhibit A–6. Therefore, we preliminarily find that the comparison market LOT is at a more advanced stage of distribution when compared to CEP sales because HYSCO provides many selling functions to its comparison market customers, which are not otherwise provided in HYSCO's CEP LOT. *Id.*; *see also*, HYSCO's Section A Response at A–15.

Because the data available do not provide an appropriate basis for making a LOT adjustment and the LOT of HYSCO's comparison market sales is at a more advanced stage than the LOT of HYSCO's CEP sales, we preliminarily determine that a CEP offset is appropriate in accordance with section 773(a)(7)(B) of the Act, as claimed by HYSCO. We based the amount of the CEP offset on comparison market indirect selling expenses, and limited the deduction for comparison market indirect selling expense to the amount of the indirect selling expenses deducted from CEP in accordance with section 772(d)(1)(D) of the Act. We applied the CEP offset to the NV–CEP

comparisons. For a detailed discussion, *see* HSYCO Analysis Memo.

SEAH

SeAH reported two channels of distribution in the comparison market (*i.e.*, Korea) distinguished by two separate classes of customer: 1) direct sales to distributors and end–users, and 2) sales via an affiliated reseller, HD Steel Corporation, to unaffiliated distributors and end–users in the comparison market. *See* SeAH's B and C questionnaire responses at B–2. SeAH stated that there was no difference in the LOTs for its sales in the comparison market. *See* SeAH's B and C questionnaire responses at B–19. In the U.S. market, SeAH reported one LOT corresponding to two channels of distribution for the CEP sales made through its affiliated U.S. companies, PPA and State Pipe. *See* SeAH's B and C questionnaire responses at C–20. SeAH stated that it was not claiming a LOT adjustment, because it had no comparison market sales that were at the same LOT as the U.S. CEP sales, but stated that a CEP offset is warranted for its U.S. sales. *See* SeAH's A questionnaire response at 23. Furthermore, SeAH stated that its U.S. LOT is less advanced than its comparison market LOT. *Id.*

In our analysis, we determined that SeAH's level of selling functions to its comparison market customers for each of the four selling function categories (*i.e.*, sales process and marketing support, freight and delivery, inventory maintenance and warehousing, and warranty and technical services) did not vary significantly by channel of distribution. *See* SeAH's Supplemental Response at Exhibit A–46. We examined the level of selling functions for SeAH's U.S. customers and found that they did not vary significantly by channel of distribution. *Id.* Therefore, we preliminary determine that SeAH's comparison market and U.S. market sales constitute a single LOT.

We then compared the selling functions performed by SeAH for its CEP sales to the selling functions provided in the comparison market. We found that SeAH provides significant selling activities in the comparison market related to the sales process and marketing support selling functions, as well as warranty selling functions, which it does not provide for the unaffiliated U.S. market customer. *See* SeAH Analysis Memo and SeAH's Supplemental Response at Exhibit A–46, for business proprietary information on SeAH's selling functions. The differences in selling functions performed for comparison market and CEP transactions indicate that SeAH's comparison market sales involved a more advanced stage of distribution than its CEP sales. In the comparison market, SeAH provides marketing further down the chain of distribution by promoting certain downstream selling functions that are normally performed by the affiliated reseller in the U.S. market. *See* SeAH Analysis Memo and Supplemental Response at Exhibit A–46. On this basis, we determined that the comparison market LOT is at a more advanced stage of distribution when compared to CEP sales because SeAH provides more selling functions in the comparison market at higher levels of service as compared to selling functions performed for its CEP sales. Thus, we find that SeAH's comparison market sales are at a more advanced LOT than its CEP sales.

Based upon our analysis, we preliminarily determine that CEP and the starting price of comparison market sales represent different stages in the marketing process, and are thus at different LOTs. Therefore, when we compared CEP sales to the comparison market sales, we examined whether an LOT adjustment may be appropriate. In this case, because SeAH sold at one LOT in the comparison market, there is no basis upon which to determine whether there is a pattern of consistent price differences between LOTs. Further, we do not have the information which would allow us to examine the price patterns of SeAH's sales of other similar products, and there is no other record evidence upon which a LOT adjustment could be based. Therefore, no LOT adjustment was made.

Because the data available do not provide an appropriate basis for making a LOT adjustment and the LOT of SeAH's comparison market sales is at a more advanced stage than the LOT of SeAH's CEP sales, we preliminarily determine that a CEP offset is appropriate in accordance with section 773(a)(7)(B) of the Act, as claimed by SeAH. We based the amount of the CEP offset on comparison market indirect selling expenses, and limited the deduction for comparison market indirect selling expense to the amount of the indirect selling expenses deducted from CEP in accordance with section 772(d)(1)(D) of the Act. We applied the CEP offset to the NV–CEP comparisons. For a detailed discussion, *see* SeAH Analysis Memo.

Currency Conversion

We made currency conversions pursuant to 19 CFR 351.415 based on the exchange rates in effect on the date of the U.S. sale, as certified by the Federal Reserve Bank. *See* Import Administration website at: http://ia.ita.doc.gov/exchange/index.html.

Verification

As provided in section 782(i) of the Act, we intend to verify all information upon which we will rely in making our final determination.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioners. 19 CFR 351.210(e)(2) requires that requests by respondents for postponement of a final determination be accompanied by a request for an extension of the provisional measures from a four–month period to not more than six months. On October 10, 2008, SeAH requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination and that, concurrently, the Department extend the provisional measures to not more than six months. On October 15, 2008, HYSCO also submitted a request to postpone the final determination and extend the provisional measures from a four–month period to not more than six–months.

In accordance with section 733(d) of the Act and 19 CFR 351.210(b)(2)(i) and (ii), because we have made an affirmative preliminary determination in this investigation, and because we have received requests from both respondents, who account for a significant proportion of exports of the subject merchandise, we are postponing the final determination until not later than 135 days after the date of the publication of the preliminary determination.

Preliminary Determination

The weighted–average dumping margins are as follows:

Producer/Exporter	Weighted–Average Margin (Percentage)
Hyundai HYSCO	2.34
SeAH Steel Corporation	0.00 *de minimis*

Producer/Exporter	Weighted–Average Margin (Percentage)
All Others	2.34

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing CBP to suspend liquidation of all entries of welded line pipe from Korea, with the exception of those produced and exported by SeAH, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted–average dumping margin, as indicated in the chart above, as follows: (1) the rate for the firms listed above (except for SeAH, see below) will be the rate we have determined in this preliminary determination; (2) if the exporter is not a firm identified in this investigation, but the producer is, the rate will be the rate established for the producer of the subject merchandise; (3) the rate for all other producers or exporters will be 2.34 percent. These suspension–of-liquidation instructions will remain in effect until further notice.

In accordance with 19 CFR 351.204(e)(2), because the weighted–average margin for SeAH is *de minimis*, we will not instruct CBP to suspend liquidation of merchandise produced and exported by SeAH.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of the Department's preliminary affirmative determination. If the Department's final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether imports of welded line pipe from Korea are materially injuring, or threaten material injury to, the U.S. industry. We will disclose the calculations used in our analysis to parties in this proceeding in accordance with 19 CFR 351.224(b).

Public Comment

Interested parties are invited to comment on the preliminary determination. Interested parties may submit case briefs to the Department no later than seven days after the date of the issuance of the final verification report in this proceeding. *See* 19 CFR 351.309(c)(1)(i). Rebuttal briefs, the content of which is limited to the issues raised in the case briefs, must be filed within five days from the deadline date for the submission of case briefs. *See* 19 CFR 351.309(d)(1) and (2). A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Further, we request that parties submitting briefs and rebuttal briefs provide the Department with a copy of the public version of such briefs on diskette. In accordance with section 774 of the Act, the Department will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, the hearing will tentatively be held two days after the rebuttal brief deadline date at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, at a time and in a room to be determined. Parties should confirm by telephone, the date, time, and location of the hearing 48 hours before the scheduled date. Interested parties who wish to request a hearing, or to participate in a hearing if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, APO/Dockets Unit, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. *See* 19 CFR 351.310(c). At the hearing, oral presentations will be limited to issues raised in the case briefs and rebuttal briefs.

This determination is issued and published pursuant to sections 733(f) and 777(I)(1) of the Act.

Dated: October 30, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–26504 Filed 11–5–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Vessel Monitoring System for Atlantic Highly Migratory Species

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, 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 5, 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 copies of the information collection instrument and instructions should be directed to Peter Cooper, Highly Migratory Species Management Division (F/SF1), Office of Sustainable Fisheries, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910 (phone 301–713–2347).

SUPPLEMENTARY INFORMATION:

I. Abstract

According to regulations under 50 CFR 635.69, the installation of a National Marine Fisheries Service (NMFS)-approved vessel monitoring systems (VMS) is required on: (1) All vessels issued Atlantic Highly Migratory Species (HMS) limited access permits (LAP) with pelagic longline gear on board; (2) all commercial vessels issued a directed shark LAP with bottom longline gear on board that are located between 33°00′ and 36°30′ N latitudes between January 1 and July 31; and (3) all commercial vessels issued a directed shark LAP with gillnet gear on board during the right whale calving season (November 15–March 31), regardless of location. NMFS published the list of approved VMS units for bottom longline or gillnet vessels on April 15, 2004 (69 FR 19979). This list updated the types of available units for pelagic longline vessels.

VMS is required in these fisheries to aid in enforcement and protection of closed areas. The areas were closed to reduce bycatch in HMS fisheries, to aid in rebuilding overfished stocks, and to protect protected species such as North Atlantic right whales. Automatic position reports are required to be submitted on an hourly basis whenever the vessel is at-sea. The placement of VMS units on fishing vessels allows NMFS to determine vessel locations and

complements the Agency's efforts to monitor and enforce compliance with applicable regulations, including time/area closures. Vessel operators who are purchasing and installing a VMS unit for the first time are required to follow an equipment installation checklist and submit it to NMFS. The checklist provides information on the hardware and communications service selected by each vessel. NMFS uses the returned checklists to ensure that position reports are received and to aid NMFS in troubleshooting problems.

II. Method of Collection

Equipment installation checklists are submitted in paper form. Position reports are automatically sent electronically by the VMS units.

III. Data

OMB Control Number: 0648–0372.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 297.

Estimated Time per Response: 4 hours for installation, 2 hours for annual maintenance of the equipment, and 5 minutes to complete and return a one-time installation checklist.

Estimated Total Annual Burden Hours: 604.

Estimated Total Annual Cost to Public: $11,002 in start-up costs ($2,200 for a new unit, $0.42 for the equipment installation checklist), annualized to $3,667); $251,706 in operation and maintenance costs (based on the current 292 vessels plus 5 possible new vessels: VMS maintenance ($500/year, and automatic position reports ($1.00/day). Total: $255,373.

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: November 3, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–26490 Filed 11–5–08; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XL10

Endangered and Threatened Species; Status Review of Southeast Alaska Population of Pacific Herring; Request for Information

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

ACTION: Notice; request for information.

SUMMARY: We, NMFS, request information, data, and comments pertinent to a risk assessment as part of a status review of the Southeast Alaska population of Pacific herring (Clupea pallasi). On April 11, 2008, we initiated a status review of this herring stock under the Endangered Species Act (ESA). In conducting this status review, we now seek information regarding the stock's population structure and trends, current conditions of its habitat, known and anticipated threats to the viability of the population, and efforts being made to protect the species.

DATES: Information, data, and comments must be received by December 8, 2008.

ADDRESSES: Data, information, or comments may be submitted to Kaja Brix, Assistant Regional Administrator, Protected Resources Division, Alaska Region, NMFS, Attn: Ellen Sebastian.

You may submit information by any of the following methods:

1. Mail: P.O. Box 21668, Juneau, AK 99802;
2. Hand deliver to the Federal Building at 709 West 9th Street, Juneau AK.
3. Fax: (907) 586–7557
4. Email: *seakherring@ noaa.gov*. Please include ''SEAKHerring'' as an identifier in the subject line.

FOR FURTHER INFORMATION CONTACT: Kate Savage, NMFS Alaska Region (907) 586–7312, or Kaja Brix, NMFS Alaska Region, (907) 586–7235.

SUPPLEMENTARY INFORMATION:

Background

On April 2, 2007, we received a petition from the Juneau Group of the Sierra Club, Juneau, Alaska, to list the Lynn Canal stock of Pacific herring as a threatened or endangered species under the ESA and to concurrently designate critical habitat. After a review of the petition, we determined that the petitioned action was warranted and published a 90–day finding (72 FR 51619; September 10, 2007) that formally initiated a status review of the stock and requested information and comment from the public. A Biological Review Team (BRT), composed of Federal scientists with expertise in Pacific herring biology and ecology, was convened to conduct the status review. The BRT reviewed existing research and information, including both published and unpublished literature and data on herring stocks throughout the eastern North Pacific.

Based on information contained in the status review produced by the BRT, we published our finding (73 FR 19824; April 11, 2008) that listing the Lynn Canal Pacific herring as threatened or endangered under the ESA was not warranted because the population does not constitute a species, subspecies, or distinct population segment (DPS) under the ESA. Rather, the status review concluded that the Lynn Canal Pacific herring stock is part of a larger Southeast Alaska DPS, extending to Dixon Entrance in the south, where the Southeast Alaska stock is genetically distinguished from the British Columbia stock; and to Cape Fairweather and Icy Point in the north, where the stock is limited by physical and ecological barriers. The status review further concluded that the DPS to which Lynn Canal Pacific herring belong should be considered a candidate species under the ESA. In the April 11, 2008, notice in the **Federal Register**, we therefore announced the initiation of a status review of the Southeast Alaska Pacific herring DPS. The status review for this stock will include an analysis of risk extinction, an assessment of the factors listed under section 4(a)(1) of the ESA, and an evaluation of conservation efforts for the DPS as a whole.

Information Solicited

With this notice, we request any information, data, or comments pertinent to the status review of the Southeast Alaska Pacific herring DPS, specifically concerning: (1) existing and historical population abundance; (2) existing and historical habitat location and condition; (3) population structure; (4) known and anticipated threats to Southeast Alaska Pacific herring, including destruction or modification of habitat, overutilization, disease or predation, inadequate regulatory

mechanisms, or any other natural or human factors; and (5) efforts being made to protect the species.

The Lynn Canal Pacific herring status review is available at: *http://alaskafisheries.noaa.gov/protectedresources/herring/*.

Dated: October 27, 2008.

James H. Lecky,

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

[FR Doc. E8–26543 Filed 11–5–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13164–000]

Bangor Water District; Notice of Conduit Exemption Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

October 30, 2008.

On April 11, 2008, Bangor Water District filed an application, pursuant to 16 U.S.C. 791a–825r of the Federal Power Act, for conduit exemption of the Veazie Energy Recovery Project, to be located on the water supply pipeline in Penobscot County, Maine.

The proposed Veazie Energy Recovery Project consists of: (1) A proposed powerhouse containing one generating unit having an installed capacity of 75 kilowatts, and (2) appurtenant facilities. Bangor Water District estimates the project would have an average annual generation of 590 megawatt-hours, which would be sold to a local utility.

Applicant Contact: Mrs. Kathy Moriarity, General Manager, Bangor Water District, P.O. Box 1129, Bangor, ME 04402–1129, phone (207) 947–4516.

FERC Contact: Robert Bell, (202) 502–6062.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.* More information about this project can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13203) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–26452 Filed 11–5–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2801–027]

Littleville Power Company, Inc.; Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Terms and Conditions, and Fishway Prescriptions

October 30, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent License.

b. *Project No.:* P–2801–027.

c. *Date filed:* October 31, 2007.

d. *Applicant:* Littleville Power Company, Inc.

e. *Name of Project:* Glendale Hydroelectric Project.

f. *Location:* On the Housatonic River in the Town of Stockbridge, Berkshire County. The project does not affect federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Kevin M. Webb, Environmental Affairs Coordinator, Littleville Power Company, Inc., One Tech Drive, Suite 220, Andover, MA 01810, (978) 681–1900 ext. 809, *kevin.webb@northamerica.enel.it*

i. *FERC Contact:* Kristen Murphy, (202) 502–6236 or *kristen.murphy@ferc.gov.*

j. Deadline for filing motions to intervene and protests, comments, recommendations, terms and conditions, and fishway prescriptions is, December 30, 2008, 60 days from the issuance of this notice; reply comments are due, February 12, 2009, 105 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''eFiling'' link.

k. This application has been accepted for filing and is now is ready for environmental analysis.

l. *As licensed, the existing Glendale Project consists of:* (1) A 250-foot-long, 30-foot-high concrete gravity dam with a 182-foot-long spillway; (2) a 23-acre reservoir; (3) two manually-operated 10 by 10-foot intake gates; (4) a 1,500-foot-long, 40-foot-wide intake canal; (5) a forebay structure and a 250-foot-long, 12-foot-diameter steel penstock; (6) a powerhouse with four turbine generating units with a combined installed capacity of 1,140-kilowatts; (7) a 300-foot-long tailrace channel; (8) a step-up transformer and an 83-foot-long, 13.8 kilovolt transmission line; and (9) appurtenant facilities. The Housatonic River reach that is bypassed by the project (measured from the gatehouse to the tailrace channel) is about 2,500 feet long.

The proposed project would include a new 165-kW turbine unit in the waste gate slot located at the gatehouse adjacent to the project dam. This unit would operate off of a proposed minimum bypassed reach flow of 90 cubic feet per second (cfs) or inflow. In addition, the proposed project would provide additional recreational access through formal canoe portage facilities and parking.

The applicant estimates that the total average annual generation, with the proposed additional turbine, would be 5,800 megawatt-hours. The applicant proposes to continue to operate the project in run-of-river mode with an increase in minimum flow in the bypass reach from 10 cfs to 90 cfs or inflow, whichever is less. The purpose of the

project is to produce electrical power for sale.

m. A copy of the application 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 Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210,.211,.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must (1) bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or '' FISHWAY PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

o. *Procedural Schedule:* The application will be processed according to the following revised Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target Date
Commission issues EA	March 2009.
Comments on EA	April 2009.

p. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of this notice.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–26450 Filed 11–5–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3041–004]

Mackay Bar Corporation; Notice of Conduit Exemption Application Accepted for Filing and Soliciting Comment, Motions To Intervene, and Competing Applications

October 30, 2008.

On April 28, 2008, Mackay Bar Corporation filed an application, pursuant to section 16U.S.C. 791a—825r of the Federal Power Act, for conduit exemption of the Hettinger Project, to be located on an irrigation system in Idaho County, Idaho.

The proposed Hettinger Project consists of: (1) A proposed powerhouse containing one generating unit having an installed capacity of 17.9 kilowatts, and (2) appurtenant facilities. Mackay Bar Corporation, estimates the project would have an average annual generation of 140 megawatt-hours and be sold to a local utility.

Applicant Contact: Mrs. Yvonne Goundry, General Manager, Mackay Bar Corporation, P.O. Box 7968, Boise, ID 83707, phone (208) 344–9904.

FERC Contact: Robert Bell, (202) 502–6062.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.* More information about this project can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13203) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–26456 Filed 11–5–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13269–000]

Town of Bennington, Vermont; Notice of Conduit Exemption Application Accepted for Filing and Soliciting Comment, Motions To Intervene, and Competing Applications

October 30, 2008.

On July 23, 2008, Town of Bennington, Vermont filed an application, pursuant to section 16 U.S.C. 791a—825r of the Federal Power Act, for conduit exemption of the Bennington Water Treatment Project, to be located on the water treatment pipeline in Bennington County, Vermont.

The proposed Bennington Water Treatment Project consists of: (1) A proposed powerhouse containing one generating unit having an installed capacity of 17 kilowatts, and (2) appurtenant facilities. The Town of Bennington, Vermont, estimates the project would have an average annual generation of 140 megawatt-hours and be sold to a local utility.

Applicant Contact: Mr. Stuart A. Huard, Town Manager, Town of Bennington, Vermont, P.O. Box 469, Bennington, VT 05201, phone (802) 442–1037.

FERC Contact: Robert Bell, (202) 502–6062.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing

applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.* More information about this project can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13203) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–26453 Filed 11–5–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12597–017]

Turnbull Hydro, LLC; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

October 30, 2008.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Capacity Amendment of License.

b. *Project No.:* 12597–017.

c. *Date Filed:* September 26, 2008.

d. *Applicant:* Turnbull Hydro, LLC.

e. *Name of Project:* Lower Turnbull Drop Project.

f. *Location:* The project is located on the Spring Valley Canal in Teton County, Montana.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Ted Sorenson, 5203 South 11th East, Idaho Falls, Idaho 83404 (208) 522–8069.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Steven Sachs at (202) 502–8666.

j. *Deadline for filing comments and or motions:* December 1, 2008.

Please include the project number (P–12597) on any comments or motions filed. All documents (an original and eight copies) must be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Motions to intervene, protests, comments and recommendations may be filed electronically via the Internet in lieu of paper filings, see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-filing'' link. The Commission strongly encourages electronic filings.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Request:* Turnbull Hydro, LLC proposes to change the authorized installed capacity from 5,000 kW to 6,150 kW. The licensee states the original license application included a capacity of 6,150 kW but subsequent notices, the environmental assessment, and the license use 5,000 kW as the capacity which the licensee states was an oversight. At this time, the licensee wishes to operate the project at the original capacity in order to improve its economic feasibility.

l. *Location of the Application:* A copy of the licensee's filing is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docsfiling/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call toll-free at 1–866–208–3372 or e-mail *ferconlinesupport@ferc.gov,* or for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address listed in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application (see item (j) above).

o. Any filing must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', ''MOTION TO INTERVENE'', or ''RECOMMENDATIONS'', as applicable, and the Project Number of the particular application to which the filing refers.

p. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–26451 Filed 11–5–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2582–027]

Rochester Gas and Electric Corp., LLC; Notice of Availability of Draft Environmental Assessment

October 30, 2008.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission (Commission or FERC) regulations contained in the Code of Federal Regulations (CFR) (18 CFR Part 380), the Office of Energy Projects staff (staff) reviewed Rochester Gas and Electric Corporation LLC's request to amend the license for the Station 2 Project (FERC No. 2582) to upgrade an existing hydroelectric unit and install a new unit in a new powerhouse and

prepared a draft Environmental Assessment (DEA) for the project. In this DEA, staff analyzes the potential environmental effects of the Proposed Action and concludes that the proposal, with recommended mitigation measures, would not constitute a major federal action significantly affecting the quality of the human environment. The project is located on the Genesee River in Monroe County, New York.

A copy of the DEA is available for review at the Commission in the Public Reference Room, or it may be viewed on the Commission's Web site at *http://www.ferc.gov* using the e-Library link. Enter the docket number (P–2582) in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or call toll-free at 1–866–208–3676 or (202) 502–8659 (for TTY).

Any comments should be filed within 30 days from the issuance date of this notice, and should be addressed to the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please reference the Station 2 Project No. 2582, on all comments. For further information on this notice, please contact John K. Novak at (202) 502–6076.

Comments may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the e-Filing link. The Commission strongly encourages electronic filing.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–26454 Filed 11–5–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. AC09–7–000]

Black Marlin Pipeline Company; Notice of Filing

October 30, 2008.

Take notice that on October 24, 2008, Black Marlin Pipeline Company submitted a request for waiver of the FERC Form No. 2–A CPA Certification Statement under Section 260.2 of the Commission's regulations.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: December 1, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–26455 Filed 11–5–08; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2008–0264; FRL–8739–3]

Agency Information Collection Activities; Proposed Collection; Comment Request; Recordkeeping and Periodic Reporting of the Production, Import, Recycling, Destruction, Transhipment, and Feedstock Use of Ozone-Depleting Substances (Renewal); EPA ICR No. 1432.29, OMB Control No. 2060–0170

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before December 8, 2008.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2008–0264, to (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to *a-and-r-Docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket, EPA–HQ–OAR–2008–0264, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kirsten Cappel, Stratospheric Protection Division, Office of Atmospheric Programs (6205J), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 343–9556; fax number: (202) 343–2338; e-mail address: *cappel.kirsten@epa.gov.* You may also visit the Ozone Depletion Web site of EPA's Stratospheric Protection Division at *http://www.epa.gov/ozone/strathome.html.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 29, 2008 (73 FR 30917) EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received only one comment during the comment period, which is addressed in the ICR. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2008–0264, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for Air and Radiation Docket is 202–566–1742.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: Recordkeeping and Periodic Reporting of the Production, Import, Recycling, Destruction, Transhipment, and Feedstock Use of Ozone-Depleting Substances (Renewal).

ICR Numbers: EPA ICR No. 1432.29, OMB Control No. 2060–0170.

ICR Status: This ICR is currently scheduled to expire on December 31, 2008. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and 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: EPA is seeking to renew this ICR, which authorizes the recordkeeping and reporting requirements established in the regulations stated in 40 CFR part 82, subpart A and as required by the United States' commitments under the international treaty *The Montreal Protocol on Substances that Deplete the Ozone Layer* (Protocol). This information collection allows EPA to monitor the United States' compliance with the Protocol and Title VI of the Clean Air Act Amendments of 1990 (CAA).

Under its Protocol commitments, the United States is obligated to cease production and import of Class I controlled substances excluding chlorofluorocarbons (CFCs) that are subject to essential use exemptions, methyl bromide that is subject to critical use exemptions or exemptions for quarantine and preshipment uses or emergency uses, previously used material, and material that will be transformed, destroyed, or exported to developing countries. The Protocol also establishes limits and reduction schedules leading to the eventual phaseout of Class II controlled substances with similar exemptions beyond the phaseout. In addition to the Montreal Protocol, the CAA has its own limits on production and consumption of controlled substances that EPA must adhere to and enforce.

Under 40 CFR 82.13, producers, importers, exporters, distributors, and other entities must meet quarterly, annual, and/or transactional requirements for Class I ozone-depleting substances (ODS). This information collection is conducted to meet U.S. obligations under the Montreal Protocol. The information collection request is required to obtain a benefit under Title VI of the CAA, added by section 764 of the 1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act (Pub. L. No. 105–277; October 21, 1998).

The requirements for Class I ODS will enable EPA to: (1) Ensure compliance with the restrictions on production, import, and export of Class I controlled substances; (2) allow exempted production and import for certain uses and the consequent tracking of that production and import; (3) address industry and Federal concerns regarding the illegal import of mislabeled used controlled substances; (4) satisfy the United States' obligations to report data under Article 7 of the Protocol; (5) fulfill statutory obligations under Section 603(b) of the CAA for reporting and monitoring; and (6) provide information to report to the U.S. Congress on the production, use, and consumption of Class I controlled substances as statutorily required in section 603(d) of Title VI of the CAA.

The reported data will enable EPA to: (1) Maintain compliance with the Protocol requirements for annual data submission on the production of ODS; and (2) analyze technical use data to ensure that exemptions are used in accordance with requirements included in the annual authorization rulemakings.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 2 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Chemical Producers, Importers, and Exporters (CFCs); Research and Development (Laboratories); and MeBr Producers, Importers, Exporters, Distributors, and Applicators.

Estimated Number of Respondents: 1,157.

Frequency of Response: Quarterly, annually, and occasionally.

Estimated Total Annual Hour Burden: 2,810 hours.

Estimated Total Annual Cost: $269,242, including $5,580 in O&M costs and no capital costs.

Changes in the Estimates: There is a decrease of 5,560 hours in the total estimated respondent burden currently identified in the OMB Inventory of Approved ICR Burdens. This large decrease is primarily due to a decrease in the overall burden for compliance, specifically the hours needed to certify laboratory and QPS uses of ozone depleting substances. The prior estimate for self-certification was much higher than the Agency's experience has shown it to be. The burden and cost estimates for the Agency increased largely due to increases in the average hourly wage rate caused by normal inflation. As implementation of electronic reporting via the Agency's central data exchange (CDX) expands to additional segments of the regulated community, EPA expects burden and costs to further decline. EPA anticipated that when the CDX system becomes fully utilized, all required data will be submitted and tracked electronically, thus reducing and/or eliminating reporting by paper.

Dated: October 30, 2008.

Deborah Williams,

Acting Director, Collection Strategies Division.

[FR Doc. E8–26498 Filed 11–5–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2008–0222; FRL–8739–4]

Agency Information Collection Activities: Submission to OMB for Review and Approval; Comment Request; Air Pollution Regulations for Outer Continental Shelf (OCS) Activities (Renewal); EPA ICR No. 1601.07; OMB Control No. 2060–0249

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before December 8, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2008–0222, to (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to *a-and-r-docket@epa.gov*, or by mail to: Environmental Protection Agency, Air and Radiation Docket and Information Center, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Shao-Hang Chu, Air Quality Policy Division, Office of Air Quality Planning and Standards, (C539–04), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–5382; fax number: (919) 541–0824; e-mail address: *chu.shao-hang@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On April 29, 2008 (73 FR 23249), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2008–0222, which is available for online viewing at *http://www.regulations.gov*, or in person viewing at the Air and Radiation Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742.

Use EPA's electronic docket and comment system at *http://www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov*.

Title: Air Pollution Regulations for Outer Continental Shelf (OCS) Activities (Renewal).

ICR Numbers: EPA ICR No. 1601.07, OMB Control No. 2060–0249.

ICR Status: This ICR is scheduled to expire on January 31, 2009. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Section 328 (Air Pollution from Outer Continental Shelf Activities) of the Clean Air Act (CAA), as amended in 1990, gives EPA responsibility for regulating air pollution from OCS sources located offshore of the states along the Pacific, Arctic, and Atlantic Coasts, and along the eastern Gulf of Mexico coast (off the coast of Florida). The U.S. Department of Interior's Minerals Management Service (MMS) retained the responsibility for regulating air pollution from sources located in the western Gulf of Mexico. To comply with the requirements of section 328 of the CAA, EPA, on September 4, 1992 at 57 FR 40792, promulgated regulations to control air pollution from OCS sources in order to attain and maintain federal and state ambient air quality standards and to comply with the provisions of part C of title I of the CAA. Sources located within 25 miles of a state's seaward boundary must comply with the same state/local air pollution control requirements as would be applicable if the source were located in the corresponding onshore area (COA). Sources located more than 25 miles from a state's seaward boundary (25 mile limit) must comply with EPA air pollution control regulations. The regulations are codified as part 55 of chapter I of title 40 of the CFR. On September 2, 1997, EPA made two court-ordered revisions to the regulations.

This ICR addresses the information collection burden (i.e., hours and costs) to industry respondents who are subject to the reporting, recordkeeping, and testing requirements of the OCS air regulations. Industry respondents include owners or operators of existing and new or modified stationary sources. Since the OCS Air Regulations essentially extend the coverage of other regulations, the data and information requirements associated with the regulations will vary depending on the underlying regulations. For example, sources located within a 25-mile limit off the coast of a nonattainment area will generally have more stringent New Source Review (NSR) regulations than those locating off the coast of an attainment area. The data and information requirements will also vary depending on the size and type of source. The exploration sources are generally smaller sources and not subject to the permit requirements of larger sources.

This ICR also addresses the burden to the agencies who are responsible for implementing and enforcing the OCS regulations. The EPA has delegated the authority to implement and enforce the OCS regulations for sources located off the coast of California to four local air pollution control agencies: Santa Barbara County Air Pollution Control District (SBCAPCD); South Coast Air Quality Management District (SCAQMD); Ventura County Air Pollution Control District (VCAPCD);

and San Luis Obispo County Air Pollution Control District (SLOAPCD). The EPA implements and enforces the regulations for all other sources under its authority.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 112 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; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Entities potentially affected by this action are all outer continental shelf sources except those located in the Gulf of Mexico west of 87.5 degrees longitude (near the border of Florida and Alabama). For sources located within 25 miles of States' seaward boundaries, the requirements are the same as those that would be applicable if the source were located in the corresponding onshore area. In States affected by this rule, State boundaries extend three miles from the coastline, except off the coast of the Florida Panhandle, where the State's boundary extends three leagues (about nine miles) from the coastline.

Estimated Number of Respondents: 65.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 30,797.

Estimated Total Annual Cost: $42,756, which includes $9,506 annualized capital/startup costs and $33,250 annual O&M costs.

Changes in the Estimates: There is a decrease of 3,227 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is due to the projected changes in the mix and type of sources projected to occur in the upcoming clearance period. Most notably, there is a significant increase in the number of exploratory wells under EPA authority and the addition of eight alternative energy projects. In contrast, the number of existing development/production wells under EPA jurisdiction has been changed from 15 to 0 in the upcoming period. However, we project that costs will increase because the estimates have been calculated using 2007 dollars and some assumptions regarding overhead, O&M costs, and capital costs have been adjusted to meet current guidelines and common procedures for preparing ICRs.

Dated: October 31, 2008.

Deborah Williams,

Acting Director, Collection Strategies Division.

[FR Doc. E8–26499 Filed 11–5–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2008–0279; FRL–8739–2]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NSPS for Bulk Gasoline Terminals (Renewal), EPA ICR Number 0664.09, OMB Control Number 2060–0006

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before December 8, 2008.

ADDRESSES: Submit your comments, referencing docket ID number EPA–OECA–2008–0279, to (1) EPA online using *www.regulations.gov* (our preferred method), or by e-mail to *docket.oeca@epa.gov*, or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Compliance Assessment and Media Programs Division, Office of Compliance, Mail Code 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; e-mail address: *williams.learia@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 30, 2008 (73 *FR* 31088), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2008–0279, which is available for public viewing online at *http://www.regulations.gov*, in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1927.

Use EPA's electronic docket and comment system at *http://www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov*, as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov*.

Title: NSPS for Bulk Gasoline Terminals (Renewal).

ICR Numbers: EPA ICR Number 0664.09, OMB Control Number 2060–0006.

ICR Status: This ICR is schedule to expire on January 31, 2009. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is

pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and 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 New Source Performance Standards (NSPS) for Bulk Gasoline Terminals were proposed on December 17, 1980, promulgated on August 18, 1983, and amended on December 22, 1983. These standards apply to the total of all loading racks at bulk gasoline terminals that deliver liquid product into gasoline tank trucks and for which construction, modification or reconstruction commenced after the date of proposal. A bulk gasoline terminal is any gasoline facility that receives gasoline by pipeline, ship or barge, and has a gasoline throughput greater than 75,700 liters per day. The affected facility includes the loading arms, pumps, meters, shutoff valves, relief valves, and other piping and valves necessary to fill delivery tank trucks. Volatile organic chemicals (VOCs) are the pollutants regulated under this subpart.

Owners or operators of the affected facilities, must make the following one-time-only reports: Notification of the date of construction or reconstruction; notification of the anticipated and actual dates of startup; notification of any physical or operational change to an existing facility that may increase the regulated pollutant emission rate; notification of the date of the initial performance test, and the results of the initial performance test. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports and records are required, in general, of all sources subject to NSPS.

Monitoring requirements specific to bulk gasoline terminals are listed in 40 CFR 60.505. These requirements consist of identifying and documenting vapor tightness for each gasoline tank truck that is loaded at the affected facility, and notifying the owner or operator of each tank truck that is not vapor-tight. The owner or operator must also perform a monthly visual inspection for liquid or vapor leaks, and maintain records of these inspections at the facility.

All reports are sent to the delegated state or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA regional office. This information is being collected to assure compliance with 40 CFR part 60, subpart XX, as authorized in section 112 and 114(a) of the Clean Air Act. The required information consists of emissions data and other information that have been determined to be private.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB Control Number for EPA's regulations listed in 40 CFR part 9 and 48 CFR chapter 15, are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information estimated to average 329 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose and 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. All existing ways will have to adjust to comply with any previously applicable instructions and requirements that have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Bulk gasoline terminals.

Estimated Number of Respondents: 40.

Frequency of Response: Initially and occasionally.

Estimated Total Annual Hour Burden: 13,165.

Estimated Total Annual Cost: $1,062,809 in Labor costs. There are no annualized capital/startup or annual Operations & Maintenance (O&M) costs associated with this ICR.

Changes in the Estimates: There is no change in the labor cost in this ICR compared to the previous ICR. This is due to two considerations: (1) The regulations have not changed over the past three years and not anticipated to change over the next three years; and (2) the growth rate for the industry is very low, negative or non-existent, so there is no significant change in the overall burden. However, there is a change in the total labor hours of 3 hours less than was in the previous ICR; this was due to a calculation error. This ICR corrects the error.

Since there are no changes in the regulatory requirements and there is no significant industry growth, the labor hours and cost figures in the previous ICR was used in this ICR, and there is no change in burden to industry.

Dated: October 31, 2008.

Deborah Williams,

Acting Director, Collection Strategies Division.

[FR Doc. E8–26501 Filed 11–5–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2008–0299; FRL–8739–1]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NSPS for Municipal Solid Waste Landfills (Renewal), EPA ICR Number 1557.07, OMB Control Number 2060–0220

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before December 8, 2008.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2008–0299, to (1) EPA online using *http://www.regulations.gov* (our preferred method), or by email to *docket.oeca@epa.gov*, or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and

Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Compliance Assessment and Media Programs Division, Office of Compliance, Mail Code 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; e-mail address: *williams.learia@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 30, 2008 (73 FR 31088), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2008–0299, which is available for public viewing online at *http://www.regulations.gov*, in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1927.

Use EPA's electronic docket and comment system at *http://www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper will be made available for public viewing at *http://www.regulations.gov*, as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov*.

Title: NSPS for Municipal Solid Waste Landfills (Renewal).

ICR Numbers: EPA ICR Number 1557.07, OMB Control Number 2060–0220.

ICR Status: This ICR is scheduled to expire on January 31, 2009. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and 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 New Source Performance Standards (NSPS) for Municipal Solid Waste Landfills were proposed on May 30, 1991 and promulgated on March 12, 1996. These standards apply to municipal solid waste landfills for which construction, modification or reconstruction commences either on or after May 30, 1991. The rule requires the installation of properly designed emission control equipment, and the proper operation and maintenance of this equipment. These standards rely on the capture and reduction of methane, carbon dioxide, and non-methane organic gas compound emissions by combustion devices (boilers, internal combustion engines, or flares).

Owners and operators of the affected facilities described must make initial reports when a source becomes subject to the standards. Conduct and report on performance tests, report on annual or periodic emission rates, report on design plans, report on equipment removal and closure, as well as maintain records of the reports, system design and performance tests, monitoring and exceedances, plot map, and well locations.

Any owner or operator subject to the provisions of this part must maintain a file of the applicable reporting and recordkeeping requirements for at least five years following the collection of such measurements, maintenance reports, and records.

All reports are sent to the delegated state or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA regional office. This information is being collected to assure compliance with 40 CFR part 60, subpart WWW, as authorized in sections 112 and 114(a) of the Clean Air Act. The required information consists of emissions data and other information that have been determined to be private.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB Control Number for EPA's regulations listed in 40 CFR part 9 and 48 CFR chapter 15, are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information estimated to average 17 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose and 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. All existing ways will have to adjust to comply with any previously applicable instructions and requirements that have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Municipal solid waste landfills.

Estimated Number of Respondents: 175.

Frequency of Response: Initially, occasionally and annually.

Estimated Total Annual Hour Burden: 3,548.

Estimated Total Annual Cost: $2,133,921, which is comprised of $2,113,271 in Labor costs, Operations & Maintenance (O&M) costs of $20,650, and no annualized capital costs.

Changes in the Estimates: There is no change in the labor hours or cost in this ICR compared to the previous ICR. This is due to two considerations: (1) the regulations have not changed over the past three years and are not anticipating any changes over the next three years; and (2) the growth rate for the industry is very low, negative or non-existent, so there is no significant change in the overall burden. It should be noted that the previous ICR rounded the burden cost up to the nearest one thousand. In this ICR, the exact cost figure is reported which results in an apparent decrease of the (O&M) cost when, in fact, no decrease has occurred.

Since there are no changes in the regulatory requirements and there is no significant industry growth, the labor

hours and cost figures in the previous ICR was used in this ICR, and there is no change in burden to industry.

Dated: October 31, 2008.

Deborah Williams,

Acting Director, Collection Strategies Division.

[FR Doc. E8–26502 Filed 11–5–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8738–5]

New York State Prohibition of Marine Discharges of Vessel Sewage; Receipt of Petition and Final Affirmative Determination

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Notice is hereby given that a petition has been received from the State of New York requesting a determination by the Regional Administrator, U.S. Environmental Protection Agency, that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for Hempstead Harbor, Nassau County, New York. The waters of the proposed No Discharge Zone fall within the jurisdictions of the Town of North Hempstead, the Town of Oyster Bay, the County of Nassau, the City of Glen Cove and the Villages of Sea Cliff, Roslyn Harbor, Roslyn, Flower Point and Sands Point. These entities, through the New York Department of State and the Hempstead Harbor Protection Committee prepared the application for the designation of a Vessel Waste No Discharge Zone, which was submitted by the New York State Department of Environmental Conservation.

EPA published a Tentative Affirmative Determination on July 15, 2008, in the **Federal Register**.

Public comments were solicited for 30 days and the comment period ended on August 14, 2008. Comments were received from three individuals, one stating that EPA should not blame the boaters for water quality problems, one supporting the proposed NDZ and one who finds that pumpout facilities are sometimes inoperable and that fines should be levied against the marinas that cannot provide the pumpout service on which our determinations are based.

Regarding the first comment of ''blaming the boaters,'' Section 312(f)(3) of the Clean Water Act allows States to prohibit the discharge of sewage, whether treated or untreated, from vessels for the greater protection and enhancement of water quality. EPA determines whether adequate facilities, for the safe and sanitary removal and treatment of the sewage, are reasonably available. We have found the facilities in the proposed areas are reasonably available and recommend finalizing our determination. Regarding the third comment, the Clean Water Act Section 312(f) does not provide for the assessment of fines against marinas for inoperable pumpouts. In the past, when we have been made aware of inoperable or inaccessible pumpouts we have contacted the State agencies and requested their assistance in resolution of the matter. The situation has always been resolved as expeditiously as possible. EPA will continue to refer complaints about non-operational pumpouts to the appropriate State and local authorities when such complaints are received.

SUPPLEMENTARY INFORMATION: Notice is hereby given that a petition has been received from the State of New York requesting a determination by the Regional Administrator, U.S. Environmental Protection Agency, pursuant to section 312(f)(3) of Public Law 92–500 as amended by Public Law 95–217 and Public Law 100–4, that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for Hempstead Harbor and its harbors and creeks within the following boundaries: South of a line drawn from Mott Point on the west side of the harbor to a breakwater approximately one-half mile north of Mosquito Cove on the east side of the harbor (Lat 40°52′ N, Long 73°40′ W) within the Villages of Sea Cliff, Roslyn, Roslyn Harbor, Flower Point and Sands Point and the City of Glen Cove.

New York has provided documentation indicating that the total vessel population is estimated to be 1,350 in the proposed area. Five pumpout facilities are operational in the harbor, these facilities are Tappen Marina, Bar Beach, Brewer's Marina, Sea Cliff Yacht Club, and Glen Cove Yacht Club. In addition to these five pumpout facilities, the Towns of North Hempstead Harbor and Oyster Bay each operate pumpout boats that serve the harbor. Based upon the criteria cited in the Clean Vessel Act and based upon the vessel population, Hempstead Harbor requires approximately three to five pumpout facilities. The harbor has seven facilities operational which satisfies the criteria.

Tappen Marina Pumpout is located at 40°50′2.44″ N/73°39′2.93″ W. The pumpout is user operated and available 24 hours per day and 365 days a year. The contact for information on the pumpout is the Town of Oyster Bay Dockmaster or the Parks Commissioner at 516–674–7100 and the facility fee is free. Vessel limitations are 50 feet in length and 10 feet in draft. An onsite septic field is used for disposal, with transport to a wastewater treatment plant as backup.

Brewer's Marina is located at 40°51′16.17″ N/73°38′46.51″ W. The pumpout is user operated and available 24 hours per day from April 1 to November 30, seven days a week. The contact for information is the Brewer's Marina at 516–671–5563 and the facility fee is free. Vessel limitations are 40 feet in length and 6 feet in draft. The pumpout facility is directly connected to the Glen Cove wastewater treatment facility.

Sea Cliff Yacht Club is located at 40°51′11.03″ N/73°38′59.11″ W and is available Memorial Day through October 15th, 9 a.m. until 5 p.m. on weekdays and by appointment on weekends. The contact for information is Jim Kowchesski, Manager, at (516) 671–7374 or the Dockmaster at (516) 671–0193 and the facility fee is $5.00. Vessel limitations are 40 feet in length and 4.5 feet in draft. The pumpout facility discharges to the Glen Cove wastewater treatment facility.

The Town of Oyster Bay Pumpout Boat operates in Hempstead Harbor and Oyster Bay and is available June through October, Friday through Monday. The contact for information is the Town of Oyster Bay at 516–677–5711 or VHF Channel 9 and the fee is free. No vessel limitations exist. The Roosevelt Marina pumpout is used for disposal sewage from the pumpout boat and the marina pumpout discharges to the Oyster Bay Sewer District wastewater treatment plant.

The Town of North Hempstead Pumpout Boat operates in Hempstead Harbor and Manhasset Bay and is available June through September, Wednesday through Sunday. The contact for information is the Town of Hempstead at 516–767–4622 or VHF Channel 9 and the fee is free. No vessel limitations exist. The pumpout boat discharges to the local sewer at Town dock. While Bar Beach and the Glen Cove Yacht Club pumpout facilities are listed in the petition, no information is provided regarding location, contact information or fees.

The EPA hereby makes a final affirmative determination that adequate facilities for the safe and sanitary

removal and treatment of sewage from all vessels are reasonably available for Hempstead Harbor in the County of Nassau, New York.

Dated: October 16, 2008.

Alan J. Steinberg,

Regional Administrator, Region 2.

[FR Doc. E8–26495 Filed 11–5–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8738–1]

Notice of Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement concerning the Chief Supply/Greenway Superfund Site, near Haskell, Wagoner County, Oklahoma.

The settlement requires the sixty-six (66) *de minimis* settling parties to pay a total of $178,442.00 as payment of response costs to the Hazardous Substances Superfund. The settlement includes a covenant not to sue pursuant to sections 106 or 107 of CERCLA, 42 U.S.C. 9606 or 9607.

For thirty (30) days beginning the date of publication of this notice, the Agency will receive written comments relating to this notice and will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at 1445 Ross Avenue, Dallas, Texas 75202–2733.

DATES: Comments must be submitted on or before December 8, 2008.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at 1445 Ross Avenue, Dallas, Texas 75202–2733. A copy of the proposed settlement may be obtained from Kevin Shade, 1445 Ross Avenue, Dallas, Texas 75202–2733 or by calling (214) 665–2708. Comments should reference the Chief Supply/Greenway Superfund Site, near Haskell, Wagoner County, Oklahoma, and EPA Docket Number 06–07–07, and should be addressed to Kevin Shade at the address listed above.

FOR FURTHER INFORMATION CONTACT: Gloria Moran, 1445 Ross Avenue, Dallas, Texas 75202–2733 or call (214) 665–3193.

Dated: October 28, 2008.

Lawrence E. Starfield,

Acting Regional Administrator (6RA).

[FR Doc. E8–26485 Filed 11–5–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8738–4]

Environmental Protection Agency EPA

New York State Prohibition of Marine Discharges of Vessel Sewage; Receipt of Petition and Final Affirmative Determination

ACTION: Notice.

SUMMARY: Notice is hereby given that a petition has been received from the State of New York requesting a determination by the Regional Administrator, U.S. Environmental Protection Agency (EPA), that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for Oyster Bay/Cold Spring Harbor Complex, New York. The waters of the proposed No Discharge Zone fall within the jurisdictions of the Town of Oyster Bay, the Town of Huntington, the Village of Bayville, the Village of Bayville, the Village of Centre Island, the Village of Cove Neck, the Village of Lattingtown, the Village of Laurel Hollow, the Village of Lloyd Harbor, the Village of Mill Neck, the Village of Oyster Bay Cove, the County of Nassau, and the County of Suffolk. These entities submitted an application prepared by Cashin Associates, P.C. for the designation of a Vessel Waste No Discharge Zone. New York State Department of Environmental Conservation certified the need for greater protection of the water quality.

EPA published a Tentative Affirmative Determination on July 15, 2008, in the **Federal Register**.

Public comments were solicited for 30 days and the comment period ended on August 14, 2008.

Comments were received from three individuals, one stating that EPA should not blame the boaters for water quality problems, one supporting the proposed NDZ and one who finds that pumpout facilities are sometimes inoperable and that fines should be levied against the marinas that cannot provide the pumpout service on which our determinations are based.

Regarding the first comment of ''blaming the boaters,'' Section 312(f)(3) of the Clean Water Act allows States to prohibit the discharge of sewage, whether treated or untreated, from vessels for the greater protection and enhancement of water quality. EPA determines whether adequate facilities, for the safe and sanitary removal and treatment of the sewage, are reasonably available. We have found the facilities in the proposed areas are reasonably available and recommend finalizing our determination. Regarding the third comment, the Clean Water Act Section 312(f) does not provide for the assessment of fines against marinas for inoperable pumpouts. In the past, when we have been made aware of inoperable or inaccessible pumpouts we have contacted the State agencies and requested their assistance in resolution of the matter. The situation has always been resolved as expeditiously as possible. EPA will continue to refer complaints about non-operational pumpouts to the appropriate State and local authorities when such complaints are received.

SUPPLEMENTARY INFORMATION: Notice is hereby given that a petition has been received from the State of New York requesting a determination by the Regional Administrator, U.S. Environmental Protection Agency, pursuant to section 312(f)(3) of Public Law 92–500 as amended by Public Law 95–217 and Public Law 100–4, that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for Oyster Bay/Cold Spring Harbor Complex and its harbors and creeks within the following boundary:

South of a line drawn from Rocky Point on Centre Island in west to Caumsett State Park in the east. The Complex encompasses 6400 acres of open water and intertidal area. The waterbodies included in the Complex are Oyster Bay Harbor between Bayville Bridge and Plum Point on Centre Island, Mill Neck Creek to the west of Bayville Bridge, Cold Spring Harbor south of a line between Cooper bluff in Cove Neck and West Neck Beach in the Village of Lloyd Harbor, and Oyster Bay between Centre Island and the Lloyd Neck peninsula that connects Oyster Bay

Harbor and Cold Spring Harbor to Long Island Sound.

New York has provided documentation indicating that the total vessel population is estimated to be 2,000 in the proposed area. Based upon boat census data, approximately 1000 to 1500 vessels would be equipped with a Type III marine sanitation device (holding tank). Four pumpout facilities are operational in the Complex, these facilities are Roosevelt Marina, Powles Marina, Town of Oyster Bay Pumpout Barges (2-East and West), and Town of Oyster Bay Pumpout Vessel. Based upon the criteria cited in the Clean Vessel Act (a pumpout facility can adequately service 300 to 600 vessels) and based upon the vessel population, the Complex requires approximately three to six pumpout facilities. The harbor has five facilities operational which satisfies the criteria. An additional pumpout boat is available when needed.

Roosevelt Marina Pumpout is located at 40°52.635″ N/73°31.805″ W. The pumpout is available 24 hours per day and 365 days a year. The contact for information on the pumpout is the Town of Oyster Bay, Roosevelt Marina Pumpout, VHF Channel 9 or 516–797–4110. The facility fee is free. Vessel limitations are 36 feet in length and 4 feet in draft at dead low tide. The collected vessel sewage is discharged to the sewer and treated at the Oyster Bay Sewer District Wasterwater Treatment Plant.

Powles Marina Pumpout is at 40°52′31.17″ N/73°28′17.94″ W. The pumpout is available 24 hours per day from Mid-April to October 31, seven days a week. The contact for information is the Powles Marina at 631–367–7670 or VHF Channel 9. The facility fee is free. Vessel limitations are 50 feet in length and 5 feet in draft at low tide. The pumpout facility is serviced by the town sewage truck.

Town of Oyster Bay Pumpout Barges are located at 40°52.657″ N/73°31.456″ W and 40°52.804″ N/73°32.264″ W. The barges are available Mid-April through October 31, 24 hours a day, 7 days per week. The contact for information is Oyster Bay Pumpout Barge on VHF Channel 9. The facility fee is free. Vessel limitations are location dependent. The pumpout barges offload vessel sewage at the Roosevelt Marina Pumpout.

The Town of Oyster Bay Pumpout Vessel operates in the Complex and is available Mid-April through October 31, Thursday through Sunday, from 10 am until 6 pm. The contact for information is the Town of Oyster Bay Pumpout Vessel on VHF Channel 9. The facility fee is free. The Roosevelt Marina Pumpout is used for disposal sewage from the pumpout boat and the marina pumpout discharges to the Oyster Bay Sewer District wastewater treatment plant.

The EPA hereby makes a final affirmative determination that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the Oyster Bay/Cold Spring Harbor Complex in the Counties of Nassau and Suffolk, New York.

Dated: October 16, 2008.

Alan J. Steinberg,

Regional Administrator, Region 2.

[FR Doc. E8–26497 Filed 11–5–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2008–0761; FRL–8390–2]

Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations; Technical Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On October 29, 2008, EPA issued a Notice of Receipt of Requests for Amendments by Registrants to Delete Uses in Certain Pesticide Registrations. Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any request in the **Federal Register**. The October 29 Notice inadvertently included a request to delete various uses from EPA Registrations 000279–02712 (Furadan 10G Insecticide/Nematicide), 000279–02876 (Furadan 4F Insecticide/Nematicide), 000279–03023 (Furadan 15G Insecticide/Nematicide), and 000279–03310 (Furadan LFR Insecticide/Nematicide). All of these registrations contain the active ingredient Carbofuran. The Notice contained errors regarding the request to delete uses for these registrations. This correction removes all of these registrations from this notice.

DATES: Because this technical correction removes only these four use deletion requests, the effective date for the remaining use deletions remains unchanged from the October 29 Notice. The remaining deletions are effective April 27, 2009 or November 28, 2008 for registrations for which the registrant requested a waiver of the 180–day comment period.

Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant on or before April 27, 2009 or November 28, 2008 for registrations for which the registrant requested a waiver of the 180–day comment period.

FOR FURTHER INFORMATION CONTACT: John Jamula, Information Technology and Resources Management Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6426; e-mail address: *jamula.john@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2008–0761. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

II. What Does this Correction Do?

This Notice corrects an error that was contained in an October 29 (73 FR 64327) notice of receipt of request for amendments by registrants to delete uses in certain pesticide registrations. The October 29 notice inadvertently included a request to delete certain uses from EPA Registrations 000279–02712

(Furadan 10G Insecticide/Nematicide), 000279–02876 (Furadan 4F Insecticide/Nematicide), 000279–03023 (Furadan 15G Insecticide/Nematicide), and 000279–03310 (Furadan LFR Insecticide/Nematicide). Although EPA has received a request from the registrant to voluntarily cancel uses, the October 29 **Federal Register** notice omitted certain uses and provided an incorrect time frame for submitting comments. Therefore, EPA is correcting the notice of receipt as set forth below. EPA will subsequently publish a revised **Federal Register** notice announcing the requested carbofuran amendments with the correct uses and correct time frame for providing comments.

FR Doc. E8–25517 published in the **Federal Register** of October 29, 2008 (73 FR 64327)(FRL–8387–3) is corrected on page 64328, in the table, by removing the entries for EPA Registrations 000279–02712 (Furadan 10G Insecticide/Nematicide), 000279–02876 (Furadan 4F Insecticide/Nematicide), 000279–03023 (Furadan 15G Insecticide/Nematicide), and 000279–03310 (Furadan LFR Insecticide/Nematicide).

List of Subjects

Environmental protection, Pesticides and pests.

Dated: October 31, 2008.

Oscar Morales,

Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc. E8–26484 Filed 11–5–08; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) being Reviewed by the Federal Communications Commission, Comments Requested

October 31, 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 5, 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 Number: 3060–0703.

Title: Determining Costs of Regulated Cable Equipment and Installation.

Form Number: FCC Form 1205.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit entities.

Number of Respondents and Responses: 4,000 respondents; 6,000 responses.

Estimated Time per Response: 4–12 hours.

Frequency of Response: Recordkeeping requirement; Annual 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 Telecommunications Act of 1996 and 623(a)(7) of the Communications Act of 1934, as amended.

Total Annual Burden: 52,000 hours.

Total Annual Cost: $900,000.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: Information derived from FCC Form 1205 filings is used to facilitate the review of equipment and installation rates. This information is then reviewed by each cable system's respective local franchising authority. Section 76.923 records are kept by cable operators in order to demonstrate that charges for the sale and lease of equipment for installation have been developed in accordance with the Commission's rules.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–26489 Filed 11–5–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

October 29, 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 5, 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: Submit your comments by e-mail to *PRA@fcc.gov.* Include in the e-mail the OMB control number of the collection or, if there is no OMB control number, the Title shown in the **SUPPLEMENTARY INFORMATION** section below. If you are unable to submit your comments by e-mail contact the person listed below to make alternate arrangements.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) contact Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC or via Internet at *PRA@fcc.gov* or on (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0027.

Title: Application for Construction Permit for a Commercial Broadcast Station.

Form Number: FCC Form 301.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for profit entities; Not-for-profit institutions; State, Local or Tribal Governments.

Number of Respondents/Responses: 4,353.

Estimated Time per Response: 3–6 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Total Annual Burden: 15,690 hours.

Total Annual Costs: $53,191,602.

Nature of Response: Required to obtain or retain benefits. The statutory authority for this information collection is contained in 154(i), 303 and 308 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this information collection.

Privacy Act Impact Assessment: No impact(s).

Needs and Uses: On December 18, 2007, the Commission adopted a *Report and Order and Third Further Notice of Proposed Rulemaking* (the ''Order'') in MB Docket Nos. 07–294; 06–121; 02–277; 04–228, MM Docket Nos. 01–235; 01–317; 00–244; FCC 07–217. The Order adopts rule changes designed to expand opportunities for participation in the broadcasting industry by new entrants and small businesses, including minority- and women-owned businesses. Consistent with actions taken by the Commission in the *Order*, the following changes are made to Form 301: The instructions to Form 301 have been revised to incorporate a definition of ''eligible entity,'' which will apply to the Commission's existing Equity Debt Plus (''EDP'') standard, one of the standards used to determine whether interests are attributable. Section II of the form includes a new question asking applicants to indicate whether the applicant is claiming ''eligible entity'' status. The instructions have been revised to assist applicants with completing the new question.

OMB Control Number: 3060–0110.

Title: Application for Renewal of Broadcast Station License.

Form Number: FCC Form 303–S.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for profit entities; Not-for-profit institutions; State, Local or Tribal Governments.

Number of Respondents/Responses: 3,737.

Estimated Time per Response: 1.25–12.08 hours.

Frequency of Response: Recordkeeping requirement; 8-year reporting requirement; Third party disclosure requirement.

Total Annual Burden: 8,405 hours.

Total Annual Costs: $ 2,069,554.

Nature of Response: Required to obtain or retain benefits. The statutory authority for this information collection is contained in 154(i), 303, 307 and 308 of the Communications Act of 1934, as amended, and section 204 of the Telecommunications Act of 1996.

Nature and Extent of Confidentiality: There is no need for confidentiality with this information collection.

Privacy Act Impact Assessment: No impact(s).

Needs and Uses: On December 18, 2007, the Commission adopted a *Report and Order and Third Further Notice of Proposed Rulemaking* (the ''Order'') in MB Docket Nos. 07–294; 06–121; 02–277; 04–228, MM Docket Nos. 01–235; 01–317; 00–244; FCC 07–217. The Order adopts rule changes designed to expand opportunities for participation in the broadcasting industry by new entrants and small businesses, including minority- and women-owned businesses. Consistent with actions taken by the Commission in the Order, the following changes are made to Form 303–S: The instructions to Form 303–S have been revised to incorporate a definition of ''eligible entity,'' which will apply to the Commission's existing Equity Debt Plus (''EDP'') standard, one of the standards used to determine whether interests are attributable. Section II of the form includes a new certification concerning compliance with the Commission's rule against discrimination in advertising sales agreements. The instructions for Sections II have been revised to include a new description of the certification.

OMB Control Number: 3060–0031.

Title: Application for Consent to Assignment of Broadcast Station Construction Permit or License, FCC Form 314; Application for Consent to Transfer Control of Entity Holding Broadcast Station Construction Permit or License, FCC Form 315; Section 73.3580, Local Public Notice of Filing of Broadcast Applications.

Form Number: FCC Forms 314 and 315.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for profit entities; Not-for-profit institutions; State, Local or Tribal Governments.

Number of Respondents: 4,820.

Number of Responses: 12,520.

Estimated Time per Response: 1–6 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Total Annual Burden: 21,460 hours.

Total Annual Costs: $36,066,450.

Nature of Response: Required to obtain or retain benefits. The statutory authority for this information collection is contained in 154(i), 303 and 308 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this information collection.

Privacy Act Impact Assessment: No impact(s).

Needs and Uses: On December 18, 2007, the Commission adopted a *Report and Order and Third Further Notice of Proposed Rulemaking* (the ''Order'') in MB Docket Nos. 07–294; 06–121; 02–277; 04–228, MM Docket Nos. 01–235; 01–317; 00–244; FCC 07–217. The Order adopts rule changes designed to expand opportunities for participation in the broadcasting industry by new entrants and small businesses, including minority- and women-owned businesses. Consistent with actions taken by the Commission in the Order, the following changes are made to Forms 314 and 315: The instructions to Form 314 have been revised to incorporate a definition of ''eligible entity,'' which will apply to the Commission's existing Equity Debt Plus (''EDP'') standard, one of the standards used to determine whether interests are attributable. Section II of the form includes a new certification concerning compliance with the Commission's anti-discrimination rules. Section III of the form includes a new question asking

applicants to indicate whether the applicant is claiming ''eligible entity'' status. Section III also contains a new question asking applicants to indicate whether the proposed transaction involves the assignment of a radio station license that is part of a non-compliant, grandfathered cluster of radio licenses, and whether any licenses will be divested within 12 months of consummation of the transaction and assigned to an eligible entity. The instructions for sections II and III have been revised to assist applicants with completing the new questions.

The instructions to Form 315 have been revised to incorporate a definition of ''eligible entity,'' which will apply to the Commission's existing Equity Debt Plus (''EDP'') standard, one of the standards used to determine whether interests are attributable. Section II of the form includes a new certification concerning compliance with the Commission's anti-discrimination rules. Section IV of the form includes a new question asking applicants to indicate whether the applicant is claiming ''eligible entity'' status. Section IV also contains a new question asking applicants to indicate whether the proposed transaction involves the assignment of a radio station license that is part of a non-compliant, grandfathered cluster of radio licenses, and whether any licenses will be divested within 12 months of consummation of the transaction and assigned to an eligible entity. The instructions for sections II and IV have been revised to assist applicants with completing the new questions.

OMB Control Number: 3060–0075.

Title: Application for Transfer of Control of a Corporate Licensee or Permittee, or Assignment of License or Permit for an FM or TV Translator Station, or a Low Power Television Station—FCC Form 345.

Form Number: FCC Form 345.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for profit entities; Not-for-profit institutions; State, Local or Tribal Governments.

Number of Respondents: 1,000.

Number of Responses: 2,000.

Estimated Time per Response: 5 minutes to 1.25 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Total Annual Burden: 1,792 hours.

Total Annual Costs: $1,598,625.

Nature of Response: Required to obtain or retain benefits. The statutory authority for this information collection is contained in 154(i) and 310 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this information collection.

Privacy Act Impact Assessment: No impact(s).

Needs and Uses: On December 18, 2007, the Commission adopted a *Report and Order and Third Further Notice of Proposed Rulemaking* (the ''Order'') in MB Docket Nos. 07–294; 06–121; 02–277; 04–228, MM Docket Nos. 01–235; 01–317; 00–244; FCC 07–217. Consistent with actions taken by the Commission in the Order, the following changes are made to Form 345: Section II of Form 345 includes a new certification concerning compliance with the Commission's anti-discrimination rules and the instructions for section II have been revised to assist applicants with completing the new question. The instructions in section III have also been revised to incorporate a definition of ''eligible entity,'' which will apply to the Commission's existing Equity Debt Plus (''EDP'') standard, one of the standards used to determine whether interests are attributable.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–26491 Filed 11–5–08; 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 31, 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 5, 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 Number: 3060–0506.

Title: Application for FM Broadcast Station License.

Form Number: FCC Form 302–FM.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents/Responses: 925.

Estimated Time per Response: 1–2 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 3,135 hours.

Total Annual Costs: $417,250.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in 154(i), 303 and 308 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Privacy Impact Assessment(s): No impact(s).

Needs and Uses: FCC Form 302–FM is required to be filed by licensees and permittees of FM broadcast stations to request and obtain a new or modified station license and/or to notify the

Commission of certain changes in the licensed facilities of these stations. Data is used by FCC staff to confirm that the station is built to the terms specified in the outstanding construction permit and to ensure that any changes made to the station will not have any impact on other stations and the public. Data is extracted from FCC Form 302–FM for inclusion in the license to operate the station.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–26493 Filed 11–5–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 21, 2008.

A. Federal Reserve Bank of Chicago (Burl Thornton, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Carrie A. Zorich, and Daniel P. Stein, both of Muscatine, Iowa; Timothy J. Stein, Madison, Wisconsin, individually and as co–trustees of the Inter Vivos Stock Trust of Simon G. Stein IV and the James Philip Stein Trust No. 1, to gain control of Central Bancshares, Inc., and thereby indirectly gain control of Central State Bank, both of Muscatine, Iowa; Farmers and Merchants Bank, Galesburg, Illinois; Freedom Security Bank, Coralville, Iowa; and West Chester Savings Bank, Washington, Iowa.

Board of Governors of the Federal Reserve System, November 3, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–26465 Filed 11–5–08; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–247]

Availability of Draft Toxicological Profiles

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice of availability.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Section 104(i)(3) [42 U.S.C. 9604(i)(3)], directs the Administrator of ATSDR to prepare toxicological profiles of priority hazardous substances and to revise and publish each updated toxicological profile as necessary. This notice announces the availability of the 22nd set of toxicological profiles, which consists of four updated drafts prepared by ATSDR for review and comment. The toxicological profiles for formaldehyde and perfluoroalkyls are on a modified schedule pending additional review.

DATES: In order to be considered, comments on these draft toxicological profiles must be received on or before February 26, 2009. Comments received after the public comment period will be considered at the discretion of ATSDR based on what is deemed to be in the best interest of the general public.

ADDRESSES: Requests for printed copies of the draft toxicological profiles should be sent to the attention of Ms. Olga Dawkins, Division of Toxicology and Environmental Medicine, Agency for Toxic Substances and Disease Registry, Mailstop F–32, 1600 Clifton Road, NE., Atlanta, Georgia 30333. Electronic access to these documents is also available at the ATSDR Web site: *http://www.atsdr.cdc.gov/toxpro2.html.*

Comments regarding the draft toxicological profiles should be sent to the attention of Ms. Nickolette Roney, Division of Toxicology and Environmental Medicine, Agency for Toxic Substances and Disease Registry, Mailstop F–32, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

Requests for printed copies of the draft toxicological profiles must be in writing and must specifically identify the hazardous substance(s) profile(s) that you wish to receive. ATSDR reserves the right to provide free of charge only one copy of each profile requested. In case of extended distribution delays, requestors will be notified.

Written comments and other data submitted in response to this notice and the draft toxicological profiles should bear the docket control number ATSDR–247. Send one copy of all comments and three copies of all supporting documents to Ms. Roney at the above-stated address by the end of the comment period. Because all public comments regarding ATSDR toxicological profiles are available for public inspection, no confidential information should be submitted in response to this notice.

FOR FURTHER INFORMATION CONTACT: Ms. Olga Dawkins, Division of Toxicology and Environmental Medicine, Agency for Toxic Substances and Disease Registry, Mailstop F–32, 1600 Clifton Road, NE., Atlanta, Georgia 30333; telephone number (800) 232–4636 or (770) 488–3315.

SUPPLEMENTARY INFORMATION: The Superfund Amendments and Reauthorization Act (SARA) (Pub. L. 99–499) amends the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) (42 U.S.C. 9601 *et seq.*) by establishing certain responsibilities for ATSDR and the U.S. Environmental Protection Agency (EPA) with regard to hazardous substances most commonly found at facilities on the CERCLA National Priorities List (NPL). As part of these responsibilities, the ATSDR Administrator must prepare toxicological profiles for substances included on the priority lists of hazardous substances. These lists identify 275 hazardous substances that ATSDR and EPA determined pose the most significant potential threat to human health. The availability of the revised priority list of 275 hazardous substances was announced in the **Federal Register** on March 6, 2008 (73 FR 12178). For prior versions of the list of substances, see **Federal Register** notices dated April 17, 1987 (52 FR 12866); October 20, 1988 (53 FR 41280); October 26, 1989 (54 FR 43619); October 17, 1990 (55 FR 42067); October 17, 1991 (56 FR 52166); October 28, 1992 (57 FR 48801); February 28, 1994 (59 FR 9486); April 29, 1996 (61 FR 18744); November 17, 1997 (62 FR 61332); October 21, 1999 (64 FR 56792); October 25, 2001 (66 FR 54014); November 7, 2003 (68 FR 63098); and December 7, 2005 (70 FR 72840). [CERCLA also requires ATSDR ensure the initiation of a research program to satisfy data needs associated with the substances.] Section

104(i)(3) of CERCLA [42 U.S.C. 9604(i)(3)] outlines the content of these profiles. Each profile will include an examination, summary, and interpretation of available toxicological information and epidemiologic evaluations. This information and these data are to be used to identify the levels of significant human exposure for the substance and the associated health effects. The profiles must also include a determination of whether adequate information on the health effects of each substance is available or in the process of development. When adequate information is not available, ATSDR, in cooperation with the National Toxicology Program (NTP), is required to ensure the initiation of research to determine these health effects.

Although key studies for each of the substances were considered during the profile development process, this **Federal Register** notice solicits any additional studies, particularly unpublished data and ongoing studies, which will be evaluated for possible addition to the profiles now or in the future.

The following draft toxicological profiles will be made available to the public on or about October 17, 2008.

Document/Hazardous substance	CAS No.
1. Cadmium	007440–43–9
2. Chromium	007440–47–3
3. Manganese	007439–96–5
4. Radon	010043–92–2

All profiles issued as ''Drafts for Public Comment'' represent ATSDR's best efforts to provide important toxicological information on priority hazardous substances. We are seeking public comments and additional information which may be used to supplement these profiles. ATSDR remains committed to providing a public comment period for these documents as the best means to serve public health and our clients.

Dated: November 3, 2008.

Ken Rose,

Director, Office of Policy, Planning and Evaluation, National Center for Environmental Health/Agency for Toxic Substances and Disease Registry.

[FR Doc. E8–26472 Filed 11–5–08; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–09–0776]

Proposed Data Collections Submitted for Public Comment and Recommendations

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 Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 or send comments to Maryam I. Daneshvar, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

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 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. Written comments should be received within 60 days of this notice.

Proposed Project

Economic Analysis of the National Breast and Cervical Cancer Early Detection Program (OMB# 0920–0776)—Revision—Division of Cancer Prevention and Control, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC administers the National Breast and Cervical Cancer Early Detection Program (NBCCEDP), the largest organized cancer screening program in the United States. The NBCCEDP provides critical breast and cervical cancer screening services to underserved low-income women in the United States, the District of Columbia, 4 U.S. territories, and 13 American Indian/Alaska Native organizations. The program provides breast and cervical cancer screening for eligible women who participate in the program as well as diagnostic procedures for women who have abnormal findings. During the past decade, the NBCCEDP has provided over 7.8 million breast and cervical cancer screening and diagnostic exams to over 3.2 million low-income women. Those who are diagnosed with cancer through the program are eligible for Medicaid coverage through the Breast and Cervical Cancer Prevention and Treatment Act passed by Congress in 2000.

CDC is currently approved to collect one year of information about activity-based economic costs incurred by the NBCCEDP during the period 07/01/2005–06/30/2006 (OMB No. 0920–0776, exp. 04/30/2009). Respondents are the 68 programs participating in the NBCCEDP. Information is collected electronically through a web-based Cost Allocation Tool (CAT) and includes: Staff and consultant salaries, screening costs, contracts and material costs, provider payments, in-kind contributions, administrative costs, allocation of funds and staff time devoted to specific program activities.

CDC plans to request OMB approval for the collection of two additional, consecutive years of economic information relating to the period 07/01/2007–06/30/2009. Burden to respondents is considered acceptable since they have already been trained to use the CAT. Minor changes to the data collection instrument will be implemented in the proposed second and third years to provide enhanced information about screening and diagnostic activities supported through the use of non-Federal funds.

The activity-based cost data will be used to evaluate grantees to ensure the most appropriate use of limited program resources in delivering program services such as screening, case management and outreach. The detailed cost data will allow CDC to determine the costs of various program components, identify factors that impact average cost, perform cost-effectiveness analysis and budget impact analysis, improve the CAT, and allocate program resources more effectively and efficiently. The collection of economic cost information complements the measures of NBCCEDP effectiveness collected as Minimum Data Elements (0920–0571, exp. 01/31/2010).

There are no costs to respondents other than their time.

Estimated Annualized Burden Hours

Type of respondents	Number of respondents	Number of responses per respondent	Average burden (in hrs)	Total burden (in hrs)
NBCCEDP grantee	68	1	22	1,496

Dated: October 30, 2008.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E8–26429 Filed 11–5–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Objective Work Plan (OWP), Objective Progress Report (OPR) and Project Abstract.

OMB No.: 0980–0204.

Description: Content changes are being made to the OPR ONLY. The information in the OPR is being collected on a quarterly basis to monitor the performance of grantees and better gauge grantee progress. The standardized format will allow ANA to report results across all its program areas and flag grantees that may need additional training and/or technical assistance to successfully implement their projects.

Following are content changes being made within specific sections of the OPR form:

OBJECTIVE WORK PLAN UPDATE Section: Adding 1st through 4th Quarter (Q1,Q2,Q3,Q4) results for Activities within each Objective. The grantee can continue to add to this form each quarter (rather than on to a new form), reflecting cumulative results throughout the project period rather than just the quarter.

FINANCIAL Section: Add 2 Questions: (1) Provide details on any income generated as a result of ANA project activities; (2) Provide details on any changes made to the budget during the reporting period.

NATIVE AMERICAN YOUTH AND ELDER OPPORTUNITIES Section: Add Question: (1) Request details on any intergenerational activities between grandparents and their grandchildren.

Finally, add a new section (last section) to the form: PROJECT SUSTAINABILITY: (1) Request details on the grantee's intention to continue the project benefits and/or services after the project period has ended.

End of Content Changes to the OPR.

No changes are being made to the OWP or to the Project Abstract (below).

The information collected by the OWP is needed to properly administer and monitor the Administration for Native Americans (ANA) programs within the Administration for Children and Families (ACF). The OWP assists applicants in describing their projects' objectives and activities, and also assists independent panel reviewers, ANA staff and the ANA Commissioner during the review and funding decision process.

The Project Abstract provides crucial information in a concise format that is utilized by applicants, independent reviewers, ANA staff and the ANA Commissioner.

Respondents: Tribal Government, Native non-profit organizations, Tribal Colleges & Universities

Annual Burden Estimates.

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
OWP	500	1	3	1,500
OPR	275	4	1	1,100
Project Abstract	500	1	0.50	250

Estimated Total Annual Burden Hours: 2,850.

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments 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 of the proposed collection of information; (c) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: November 3, 2008.

Janean Chambers,

Reports Clearance Officer.

[FR Doc. E8–26519 Filed 11–5–08; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Notice of Partially Closed Meeting; National Commission on Children and Disasters

AGENCY: Administration for Children and Families, Department of Health and Human Services.

ACTION: Notice of meeting.

DATES: The open session of the meeting will be held on Thursday, November 20, 2008, from 10:45 a.m. to 5:30 p.m. and Friday, November 21, 2008, from 8:30 a.m. to 1:30 p.m. The closed session of the meeting will be held on Thursday, November 20, 2008, from 8:30 a.m. to 10:30 a.m. The portion of the meeting that will be closed to the public shall be

so in accordance with the provisions set forth in sections 552b(c)(6), Title 5 U.S.C., as amended.

ADDRESSES: The meeting will be held at the Administration for Children and Families, 901 D Street, SW., Washington, DC 20447. Seating is limited. To attend, please register by 5 p.m. EST, November 17, 2008. To register, please e-mail *carol.apelt@acf.hhs.gov* with ''Meeting Registration'' in the subject line, or call Carol Apelt at (202) 205–4618. Registration must include your name, affiliation, and phone number. If you require a sign language interpreter or other special assistance, please contact Carol Apelt as soon as possible and no later than 5 p.m. EST, November 14, 2008.

Agenda: As pertaining to man-made and natural disaster situations, the Commission will hear presentations on and discuss: (1) Medical countermeasures; (2) case management; (3) shelter design and transition to permanent housing; (4) acute medical care; (5) other matters as may reasonably come before the Commission and plans for future work of the Commission.

Additional Information: Contact Roberta Lavin, Office of Human Services Emergency Preparedness and Response, e-mail *roberta.lavin@acf.hhs.gov* or (202) 401–9306.

SUPPLEMENTARY INFORMATION: The National Commission on Children and Disasters is an independent Presidential Commission that shall independently conduct a comprehensive study to examine and assess the needs of children as they relate to preparation for, response to, and recovery from all hazards, building upon the evaluations of other entities and avoiding unnecessary duplication by reviewing the findings, conclusions, and recommendations of these entities. The Commission shall then submit a report to the President and the Congress on the Commission's independent and specific findings, conclusions, and recommendations to address the needs of children as they relate to preparation for, response to, and recovery from all hazards, including major disasters and emergencies.

Dated: October 31, 2008.

Daniel C. Schneider,

Acting Assistant Secretary for Children and Families.

[FR Doc. E8–26418 Filed 11–5–08; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0567]

Designating Additions to the Current List of Tropical Diseases in the Food and Drug Administration Amendments Act; Public Hearing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public hearing; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public hearing to obtain input on adding additional diseases to the list of tropical diseases recognized under the Food and Drug Administration Amendments Act (FDAAA), which adds a new section to the Federal Food, Drug, and Cosmetic Act (the act). The new section authorizes FDA to award priority review vouchers to sponsors of certain tropical disease product applications that meet the criteria specified by the act. The new section lists diseases considered to be ''tropical diseases'' for the purposes of this legislation, and provides for expansion of the list to include diseases meeting certain criteria. This public meeting is being held to obtain comments from the public on the criteria that should be used to determine whether an infectious disease should be added to the list, and to elicit suggestions for adding specific diseases.

DATES: The public hearing will be held on December 12, 2008, from 9 a.m. to 5 p.m. However, depending on the level of public participation, the meeting may be extended or may end early. Submit written or electronic requests for oral presentations and comments by November 17, 2008. Written or electronic comments will be accepted after the hearing until February 6, 2009.

ADDRESSES: The public hearing will be held at the National Transportation Safety Board Boardroom and Conference Center at 429 L'Enfant Plaza, SW, Washington, DC 20594. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*. All comments should be identified with the docket number found in brackets in the heading of this document. Transcripts of the hearing will be available for review at the Division of Dockets Management and on the Internet at *http://www.regulations.gov* approximately 30 days after the hearing.

FOR FURTHER INFORMATION CONTACT: Jeff O'Neill, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20903, 301–796–0777, FAX: 301–847–8753, e-mail: *jeff.o'neill@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The new section, section 524 of the act (21 U.S.C. 360n), is designed to encourage development of new drug or biological products for prevention and treatment of certain tropical diseases affecting millions of people throughout the world. Section 524 provides a means by which the holder of an application for a tropical disease product may be eligible to receive a priority review voucher upon approval of that application. This voucher entitles the sponsor to be granted a priority review for a subsequent application of a drug or biologic, submitted under section 505(b)(1) of the act (21 U.S.C. 355(b)(1)) or section 351 of the Public Health Service Act (42 U.S.C. 262), of the sponsor's choosing that would not otherwise be eligible for a priority review. FDA is committed to a goal of reviewing and taking an action within 6 months of receipt on 90% of applications that have been granted a priority review (see *http://www.fda.gov/oc/pdufa4/pdufa4goals.html*).

To be granted a priority review voucher, the tropical disease application must meet all of the following criteria:

- The application must be a human drug application as defined in section 735(1) of the act (21 U.S.C. 379g(1)).
- The application must be for the prevention or treatment of a tropical disease.
- The tropical disease application must be eligible for priority review.
- The tropical disease application must be for ''a human drug, no active ingredient (including any ester or salt of the active ingredient) of which has been approved in any other application under section 505(b)(1) or section 351 of the Public Health service Act.''

After being granted a priority review voucher, the owner of the voucher may transfer it to another sponsor. The sponsor intending to redeem a priority review voucher must notify the agency at least 365 days prior to submission of the application for which the voucher is to be redeemed. This notification constitutes a legally binding agreement to pay a supplemental user fee that is mandated by the act to be applied to an application using a priority review voucher.

The act identifies the following list of specific diseases that qualify as ''tropical diseases'' (section 524(a)(3)):

- Tuberculosis
- Malaria
- Blinding trachoma
- Buruli Ulcer
- Cholera
- Dengue/Dengue haemorrhagic fever
- Dracunculiasis (guinea-worm disease)
- Fascioliasis
- Human African trypanosomiasis
- Leishmaniasis
- Leprosy
- Lymphatic filariasis
- Onchocerciasis
- Schistosomiasis
- Soil transmitted helminthiasis
- Yaws

The legislation allows for the addition to this list of ''any other infectious disease for which there is no significant market in developed nations and that disproportionately affects poor and marginalized populations, designated by regulation by the Secretary.''

This hearing is being convened to encourage feedback from the public regarding criteria that should by used to determine the eligibility of an infectious disease for inclusion in this list and the process that should be used to make additions to the list. FDA staff will provide an overview of section 524 at the beginning of the meeting.

II. Scope of the Hearing

FDA is interested in obtaining public comment on the following issues related to the tropical diseases listed in section 524 of the act:

1. Should other infectious diseases be added at this time to the list of tropical diseases that are eligible for receiving a priority review voucher? If so, are there specific infectious diseases that you believe should be added? Provide justification for your recommendations, consistent with the act's requirements for inclusion of additional tropical diseases.

2. To be added to the list of tropical diseases, the act requires that the disease meet the following criteria:

- There must be no significant market in developed nations
- It must disproportionately affect poor and marginalized populations. How should this language be interpreted?

3. What procedures, prior to the rulemaking required by section 524(a)(3), would facilitate the process for adding infectious diseases to the list of tropical diseases?

III. Notice of Hearing Under 21 CFR Part 15

The Commissioner of Food and Drugs is announcing that the public hearing will be held in accordance with part 15 (21 CFR part 15). The hearing will be conducted by a presiding officer, who will be accompanied by FDA senior management from the Office of the Commissioner, the Center for Drug Evaluation and Research, and the Center for Biologics Evaluation and Research.

Under § 15.30(f), the hearing is informal and the rules of evidence do not apply. No participant may interrupt the presentation of another participant. Only the presiding officer and panel members may question any person during or at the conclusion of each presentation.

Public hearings under part 15 are subject to FDA's policy and procedures for electronic media coverage of FDA's public administrative proceedings (part 10 (21 CFR part 10, subpart C)). Under § 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

If you wish to make an oral presentation during the hearing, you must submit a written or electronic request by close of business on Monday, November 17, 2008. You must provide your name, title, business affiliation (if applicable), address, and type of organization you represent (e.g., industry, consumer organization), and a brief summary of the presentation (including the discussion topic(s) that will be addressed to Jeff O'Neill at *jeff.o'neill@fda.hhs.gov* (see **FOR FURTHER INFORMATION CONTACT**). Persons registered to make an oral presentation should check in before the hearing.

Participants should submit a copy of each presentation to the contact person (see **FOR FURTHER INFORMATION CONTACT**). We will file the hearing schedule with the Division of Dockets Management (see **ADDRESSES**), indicating the order of presentation and time allotted to each person. We will also mail or fax the schedule to each participant before the hearing. Participants are encouraged to arrive early to ensure the designated order of presentation.

Attendees who do not wish to make an oral presentation do not need to register. The meeting is free and seating will be on a first-come, first-served basis.

The hearing will be transcribed as stipulated in § 15.30(b). Transcripts will be available 45 days after the hearing on the Internet at *http://www.regulations.gov*. It may be viewed at the Division of Dockets Management (see **ADDRESSES**). A transcript will also be available in either hard copy or on CD–ROM after submission of a Freedom of Information request. Written requests are to be sent to the Division of Freedom of Information (HFI–35), Office of Management Programs, Food and Drug Administration, 5600 Fishers Lane, rm. 6–30, Rockville, MD 20857.

Any handicapped persons requiring special accommodations to attend the hearing should direct those needs to the contact person (see **FOR FURTHER INFORMATION CONTACT**).

To the extent that the conditions for the hearing, as described in this notice, conflict with any provisions set out in part 15, this notice acts as a waiver of those provisions as specified in § 15.30(h).

IV. Request for Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments for consideration. Persons who wish to provide additional materials for consideration should file these materials with the Division of Dockets Management. You should annotate and organize your comments to identify the specific questions identified by topic to which they refer. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Please note that on January 15, 2008, the FDA Division of Dockets Management Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic comments or submissions will be accepted by FDA only through FDMS at *http://www.regulations.gov*.

Dated: October 29, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–26528 Filed 11–5–08; 8:45 am]

BILLING CODE 4160–01–S

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 Pregnancy and Neonatology.
Date: November 24, 2008.
Time: 10 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: Michael Knecht, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6176, MSC 7892, Bethesda, MD 20892, (301) 435–1046, *knechtm@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 Channels and Receptors.
Date: November 24, 2008
Time: 2 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting).
Contact Person: Joanne L. Fujii, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7850, Bethesda, MD 20892, (301) 435–1178, *fujiij@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.

(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 28, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–26329 Filed 11–5–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of 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 a meeting of the Council of Councils.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(9)(B), Title 5 U.S.C., as amended because the premature disclosure of other and the discussions would be likely to significantly frustrate implementation of recommendations.

Name of Committee: Council of Councils.
Date: November 20–21, 2008.
Open: November 20, 2008, 8:30 a.m. to 2:30 p.m.
Agenda: Among the topics proposed for discussion are: CoC Working Group reports, trans-NIH collaborative activities in obesity and nutrition research, and the microbiome.
Place: National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892.
Closed: November 20, 2008, 2:30 p.m. to 5 p.m.
Agenda: To allow subcommittees to conduct confidential, preliminary discussions leading to the presentation of advice and recommendations to the overall Council.
Place: National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892.
Open: November 21, 2008, 8:30 a.m. to 12 p.m.
Agenda: Review of NIH Roadmap concepts and continuation of Council discussions.
Place: National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892.
Contact Person: Elizabeth L. Wilder, PhD., Director, Division of Strategic Coordination, Office of Portfolio Analysis and Strategic Initiatives, NIH, Building 1, Room 201, Bethesda, MD 20892, (301) 594–1409, *betsywilder@nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuffles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: October 29, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–26328 Filed 11–5–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, R13 Applications.
Date: November 24, 2008.
Time: 12 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Natcher Building, Room 3AN18, 45 Center Drive, Bethesda, MD 20892. (Virtual Meeting).

Contact Person: Margaret Weidman, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN18B, Bethesda, MD 20892, 301–594–3663, *weidmanma@nigms.nih.gov.*

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel. NIH Pathway to Independence Awards.

Date: December 2, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Meredith D. Temple-O'Connor, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN12C, Bethesda, MD 20892, 301–594–2772, *templeocm@mail.nih.gov.*

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, ZGM1 PPBC–6 (AN).

Date: December 2, 2008.

Time: 8:30 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Room 3AN18, 45 Center Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Carole H. Latker, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN–18, Bethesda, MD 20892, (301) 594–2848, *latkerc@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: October 29, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–26332 Filed 11–5–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, R25 grant application review.

Date: December 11, 2008.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Sooyoun (Sonia) Kim, MS, Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NIDCR/NIH, 6701 Democracy Blvd, Rm 675, Bethesda, MD 20892–4878, (301) 594–4827, *kims@email.nidr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: October 30, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–26433 Filed 11–5–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Recombinant DNA Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Recombinant DNA Advisory Committee.

Date: December 3–4, 2008.

Time: December 3, 2008, 9:30 a.m. to 5:30 p.m.

Agenda: The Recombinant DNA Advisory Committee will review and discuss selected human gene transfer protocols as well as related data management activities. Please check the meeting agenda at *http://www4.od.nih.gov/oba/RAC/meeting.htm* for more information.

Place: National Institutes of Health, The Fishers Lane Conference Center, 5635 Fishers Lane, Terrace Level Conference Room, Rockville, MD 20852.

Time: December 4, 2008, 8 a.m. to 1 p.m.

Agenda: The Recombinant DNA Advisory Committee will review and discuss selected human gene transfer protocols including a gene transfer protocol for X–SCID as well as related data management activities. Please check the meeting agenda at *http://www4.od.nih.gov/oba/RAC/meeting.htm* for more information.

Place: National Institutes of Health, The Fishers Lane Conference Center, 5635 Fishers Lane, Terrace Level Conference Room, Rockville, MD 20852.

Contact Person: Lisa A. Parker, Advisory Committee Coordinator, Office of Science Policy, Office of Biotechnology Activities, National Institutes of Health, 6705 Rockledge Drive, Suite 750–A1, Bethesda, MD 20892, 301–496–9838, *parkerla@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://www4.od.nih.gov/oba/,* where an agenda and any additional information for the meeting will be posted when available.

OMB's ''Mandatory Information Requirements for Federal Assistance Program Announcements'' (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers virtually every NIH and Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan

Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: October 30, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–26432 Filed 11–5–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Enhancing Substance Abuse Treatment Services To Address Hepatitis Infection Among Intravenous Drug Users Hepatitis Testing and Vaccine Tracking Form—In Use Without OMB Approval

The Substance Abuse and Mental Health Services Administration's (SAMHSA) Center Substance Abuse Treatment (CSAT), is requesting an OMB approval of a Hepatitis Testing and Vaccine Tracking Form for the prevention of Viral Hepatitis in patients in designated OTPs. This form is similar to the Minority AIDS Initiative HIV Rapid Testing Clinical Form that received an emergency approval (OMB No. 0930–0295) in September 2008.

This form will allow SAMHSA/CSAT to collect essential Clinical information that will be used for quality assurance, quality performance and product monitoring on approximately 264 Rapid Hepatitis C Test kits and 10,628 doses of hepatitis vaccine (Twinrix, HAV, or HBV). The above kits and vaccines will be provided to designated OTPs serving the minority population in their communities. The information collected on the Form will solicit and reflect the following information:

- Demographics (age, gender, ethnicity) of designated OTP site;
- History (Screening) of Hepatitis C exposure;
- Results of Rapid Hepatitis C Testing (Kit) and Follow-up information;
- Service Provided (type of vaccine given) Divalent vaccine (Twinrix-combination HAV and HBV) or Monovalent vaccine (HAV or/and HBV);
- Substance Abuse Treatment Outcomes (Information regarding the beginning, continuing or completion of vaccination series);
- Type of Referral Services Indicated (i.e., Gastroenterology, TB; Mental Health, Counseling, Reproductive/Prenatal, etc.);

This program is authorized under Section 509 of the Public Health Service (PHS) Act [42 U.S.C. 290bb–2].

The purpose of the form is to increase the screening and reporting of viral hepatitis in high risk minorities in OTPs. The information collected will allow SAMHSA to address the increased morbidity and mortality of hepatitis in minorities being treated for drug addiction.

The SAMHSA/CSAT Hepatitis Testing and Vaccine Tracking Form would support quality of care, provide minimum but adequate clinical and product monitoring, and provide appropriate safeguards against fraud, waste and abuse of Federal funds.

The table below reflects the annualized hourly burden.

Number of respondents screened	Responses/ respondent	Burden hours	Total burden hours
50,000	1	0.05	2,500

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 7–1044, One Choke Cherry Road, Rockville, MD 20857 and e-mail her a copy at *summer.king@samhsa.hhs.gov.* Written comments should be received within 60 days of this notice.

Dated: October 30, 2008.

Elaine Parry,

Acting Director, Office of Program Services.

[FR Doc. E8–26471 Filed 11–5–08; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2008–1040]

Navigation Safety Advisory Council; Meeting

AGENCY: Coast Guard, DHS.

ACTION: Notice of meeting.

SUMMARY: The Navigation Safety Advisory Council (NAVSAC) will meet in Washington, DC, to discuss various issues relating to the safety of navigation. The meeting will be open to the public.

DATES: NAVSAC will meet on Wednesday, December 10, 2008, from 8 a.m. to 5 p.m. and Thursday, December 11, 2008 from 8 a.m. to 5 p.m. The meeting may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before November 24, 2008. Requests to have a copy of your material distributed to each member of the committee should reach the Coast Guard on or before November 24, 2008.

ADDRESSES: NAVSAC will meet at the Courtyard by Marriott Capital Hill/Navy Yard, 104 L Street, SE., Washington, DC 20003. Send written material and requests to make oral presentations to Mr. John Bobb, the Assistant Designated Federal Officer (ADFO), Commandant (CG–54121), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001. This notice is available on our online docket,

USCG–2008–1040 at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Sollosi, the Designated Federal Officer (DFO) of NAVSAC, telephone 202–372–1545 or e-mail at *mike.m.sollosi@uscg.mil*, or Mr. John Bobb, the ADFO, telephone 202–372–1532, fax 202–372–1929 or e-mail at *john.k.bobb@uscg.mil*.

SUPPLEMENTARY INFORMATION: Notice of the meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–493).

Agenda of Meeting

The agenda for the December 10–11, 2008, NAVSAC meeting is as follows:
(1) E-Navigation Requirements.
(2) Arctic Navigation Requirements.
(3) Navigation Fairways.
(4) Unmanned Surface Vessels.

Procedural

The meeting is open to the public. Please note that the meeting may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify the DFO or ADFO no later than November 24, 2008. Written material for distribution at the meeting should reach the Coast Guard no later than November 24, 2008. If you would like a copy of your material distributed to each member of the committee in advance of the meeting, please submit 20 copies to the DFO or ADFO no later than November 24, 2008.

Information on Services for Individuals with Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the DFO or ADFO as soon as possible.

Dated: October 31, 2008.

Wayne A. Muilenburg,

Captain, U.S. Coast Guard, Office of Waterways Management.

[FR Doc. E8–26438 Filed 11–5–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–14923–B; AK–964–1410–KC–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Baan-o-yeel *kon* Corporation. The lands are in the vicinity of Rampart, Alaska, and are located in:

Fairbanks Meridian, Alaska

T. 10 N., R. 11 W.,
Secs. 3 and 32.
Containing 1,193.32 acres.
T. 8 N., R. 12 W.,
Secs. 5, 8, 17, and 20;
Secs. 29, and 32.
Containing 3,840 acres.
T. 9 N., R. 12 W.,
Secs. 20, 28, 29, and 33.
Containing 2,560 acres.
T. 8 N., R. 15 W.,
Sec. 32.
Containing 388.20 acres.
Aggregating 7,981.52 acres.

The subsurface estate in these lands will be conveyed to Doyon, Limited when the surface estate is conveyed to Baan-o-yeel *kon* Corporation. Notice of the decision will also be published four times in the Fairbanks Daily News Miner.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until December 8, 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. E8–26468 Filed 11–5–08; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–6650–B, AA–6650–A2; AK–964–1410–KC–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Belkofski Corporation. The lands are in the vicinity of Belkofski, Alaska, and are located in:

Seward Meridian, Alaska

T. 58 S., R. 81 W.,
Secs. 30 and 31.
Containing approximately 324 acres.
T. 59 S., R. 81 W.,
Sec. 6.
Containing approximately 74 acres.
T. 59 S., R. 82 W.,
Secs. 5, 6, 7 and 8;
Secs. 17, 18, and 20.
Containing 3,287.91 acres.
T. 57 S., R. 83 W.,
Sec. 32.
Containing 50.94 acres.
T. 58 S., R. 83 W.,
Sec. 20;
Secs. 21, 22 and 23;
Secs. 26 to 30, inclusive;
Sec. 35.
Containing 3,432.27 acres.
T. 59 S., R. 83 W.,
Secs. 12, 19, and 30.
Containing 424.40 acres.
T. 57 S., R. 84 W.,
Sec. 1.
Containing approximately 640 acres.
Aggregating approximately 8,234 acres.

The subsurface estate in these lands will be conveyed to The Aleut Corporation when the surface estate is conveyed to Belkofski Corporation. Notice of the decision will also be published four times in the Anchorage Daily News.

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 8, 2008 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43

CFR part 4, Subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION, CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov.* Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Hillary Woods,

Land Law Examiner, Land Transfer Adjudication I.

[FR Doc. E8–26469 Filed 11–5–08; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–6697–D, AA–6697–F, AA–6697–A2; AK–964–1410–KC–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Tanadgusix Corporation. The lands are in the vicinity of Unalaska and Umnak Islands, Alaska, and are located in:

Seward Meridian, Alaska

T. 73 S., R. 121 W.,
Secs. 25 and 36.

Containing approximately 1,280 acres.

T. 78 S., R. 126 W.,
Sec. 31.

Containing approximately 247 acres.

T. 79 S., R. 126 W.,
Secs. 2, 3, 10, and 11;
Secs. 14, 15, 23, and 24;
Secs. 25, 26, 34, and 35.

Containing approximately 7,606 acres.

T. 80 S., R. 126 W.,
Sec. 2.

Containing approximately 307 acres.

T. 78 S., R. 127 W.,
Secs. 25, 26, 33, and 34;
Secs. 35 and 36.

Containing approximately 1,464 acres.

T. 78 S., R. 131 W.,
Secs. 18, 19, and 20;
Secs. 29 to 32, inclusive.

Containing approximately 4,408 acres.

T. 79 S., R. 131 W.,
Secs. 6, 7, and 18.

Containing approximately 1,879 acres.

T. 78 S., R. 132 W.,
Secs. 1, 12, 13, and 14;
Secs. 23 to 26, inclusive;
Sec. 36.

Containing approximately 3,125 acres.

T. 79 S., R. 132 W.,
Secs. 1 and 2;
Secs. 11 to 15, inclusive;
Secs. 22, 23, and 24.

Containing approximately 3,735 acres.

T. 80 S., R. 132 W.,
Secs. 7, 12, 13 and 18;
Sec. 19;
Secs. 24 to 30, inclusive;
Secs. 32, 33, and 34.

Containing approximately 8,405 acres.

T. 81 S., R. 133 W.,
Secs. 4 and 5.

Containing approximately 1,280 acres.
Aggregating approximately 33,736 acres.

A portion of the subsurface estate in these lands will be conveyed to The Aleut Corporation when the surface estate is conveyed to Tanadgusix Corporation. Notice of the decision will also be published four times in the Anchorage Daily News.

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 8, 2008 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION, CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov.* Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Hillary Woods,

Land Law Examiner, Land Transfer Adjudication I.

[FR Doc. E8–26470 Filed 11–5–08; 8:45 am]

BILLING CODE 4310–JA–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1131–1134 (Final)]

Polyethylene Terephthalate Film, Sheet, and Strip From Brazil, China, Thailand, and the United Arab Emirates; Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is threatened with material injury by reason of imports from Brazil, China, and the United Arab Emirates (''UAE'') of polyethylene terephthalate film, sheet, and strip (''PET film''), provided for in subheading 3920.62.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce (''Commerce'') to be sold in the United States at less than fair value (''LTFV'').[2] In addition, the Commission determines that it would not have found material injury but for the suspension of liquidation.

The Commission further determines that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded by reason of imports from Thailand of PET film that have been found by Commerce to be sold in the United States at LTFV.[2]

Background

The Commission instituted this investigation effective September 28, 2007, following receipt of a petition filed with the Commission and Commerce by DuPont Teijin Films, Hopewell, VA; Mitsubishi Polyester Film of America, Greer, SC; SKC America, Inc., Covington, GA; and Toray Plastics (America), Inc., North Kingston, RI. The final phase of the investigations was scheduled by the Commission following notification of a preliminary determination by Commerce that imports of polyethylene terephthalate from Brazil, China, Thailand, and the UAE were being sold at LTFV within the meaning of section

[1] The record is defined in Sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Charlotte R. Lane determines that an industry in the United States is materially injured by reason of imports of PET film from Brazil, China, Thailand, and the United Arab Emirates.

733(b) of the Act (19 U.S.C. 1673d(b)). Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of June 26, 2008 (73 FR 36353). The hearing was held in Washington, DC, on September 18, 2008, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on October 31, 2008. The views of the Commission are contained in USITC Publication 4040 (October 2008), entitled *Polyethylene Terephthalate Film, Sheet, and Strip from Brazil, China, Thailand, and the United Arab Emirates: Investigation Nos. 731–TA–1131–1134 (Final).*

By order of the Commission.

Issued: November 3, 2008.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8–26516 Filed 11–5–08; 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

Notice is hereby given that on October 29, 2008, a proposed Consent Decree in *United States* v. *Agere Systems, Inc., et al.*, Civil Action No. 08–CV–5123 was lodged with the United States District Court for the Eastern District of Pennsylvania.

In this action the United States sought reimbursement of response costs incurred in connection with property known as the Berks Landfill Superfund Site (the ''Site''), located in Spring Township, Pennsylvania. The Consent Decree obligates the Settling Defendants to reimburse $190,000 of the United States' past response costs paid in connection with the Site from June 1, 2002 through April 28, 2006, and all response costs paid or to be paid after that date.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either emailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Agere Systems, Inc., et al.*, Civil Action No. 08–CV–5123, D.J. Ref. 90–11–2–1347/2.

The Consent Decree may be examined at the Office of the United States Attorney, Eastern District of Pennsylvania, 615 Chestnut Street, Suite 1250, Philadelphia, PA 19106, and at U.S. EPA Region 3. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, 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 $13.75 (@ 25 cents per page reproduction cost) payable to the U.S. Treasury or, if by email or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Robert Brook,

Assistant Chief, Environmental Enforcement Section Environment and Natural Resources Division.

[FR Doc. E8–26460 Filed 11–5–08; 8:45 am]

BILLING CODE 4410–CW–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under Comprehensive Environmental Response, Compensation and Liability Act

Under 28 CFR 50.7, notice is hereby given that on October 30, 2008, three proposed and related Consent Decrees in *United States* v. *American Hoechst Corp., et al.*, No. 3:08cv1509, *United States* v. *A. R. Sandri, Inc., et al.,* No. 3:08cv1508, and *United States* v. *M. Swift & Sons, Inc., et al.,* No. 3:08cv1507, were lodged with the United States District Court for the District of Connecticut.

The proposed Consent Decrees resolve claims of the United States, on behalf of the Environmental Protection Agency (''EPA''), under the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9601 *et seq.,* in connection with the Solvents Recovery Service of New England, Inc. Superfund Site in Southington, Connecticut (''Site''), against 272 defendants.

The proposed Consent Decree in *U.S.* v. *American Hoechst Corp., et al.* requires 58 defendants to perform the Remedial Design/Remedial Action (''RD/RA'') set forth in the Record of Decision (''ROD'') for the Site. The remedy includes heating, capturing and treating waste oils and solvents in the subsurface soils; excavating, consolidating and capping contaminated soil and wetland soil onsite; continuing to pump and treat contaminated groundwater; implementation of restrictions on uses of the site property and groundwater; and long term monitoring of the cap and groundwater to ensure that the cleanup remains protective of human health and the environment. EPA estimates the cost of the remedy at $29.9 million. This Consent Decree also requires the defendants: (1) To pay $2.2 million to EPA for its past response costs; (2) to pay $3.7 million to EPA from a trust account containing funds which have been set aside for those parties that would later agree to implement the ROD, in further reimbursement of EPA's past costs; (3) to pay EPA for its future costs; (4) to pay the U.S. Department of the Interior $200,000 for federal natural resource damages, including the costs of assessing those damages; and (5) to pay the State of Connecticut $2,625,000 for damages to natural resources under the State's trusteeship, including the costs of assessing those damages.

The proposed Consent Decree in *U.S.* v. *A.R. Sandri, Inc., et al.* requires 213 *de minimis* defendants to pay $23.3 million. These funds will be deposited into a trust and will be used to partially fund the performance of the remedy and the payments required under the settlement in *U.S.* v. *American Hoechst Corp., et al.*

The proposed Consent Decree in *U.S.* v. *M. Swift and Sons, Inc.* requires the sole settlor: (1) To pay $903,861 to EPA in reimbursement of its past response costs; (2) to pay $2,775 to DOI for federal natural resource damages including the costs of assessing those damages; and (3) to pay $43,364 to the State for damages to natural resources under the State's trusteeship, including the costs of assessing those damages.

All three proposed Consent Decrees provide that the settlors are entitled to contribution protection as provided by section 113(f)(2) of CERCLA, 42 U.S.C. 9613(f)(2) for matters addressed by the settlements.

The Department of Justice will receive for a period of 30 days from the date of

this publication comments relating to the proposed Consent Decrees. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to: (1) *United States* v. *American Hoechst Corp., et al.,* No. 3:08cv1509, D.J. No. 90–7–1–23/6; (2) *United States* v. *A. R. Sandri, Inc., et al.,* No. 3:08cv1508, D.J. No. 90–7–1–23/8; or (3) *United States* v. *M. Swift & Sons, Inc., et al.,* No. 3:08cv1507, D.J. No. 90–7–1–23/7. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d).

The proposed Consent Decrees may be examined at the Office of the United States Attorney, District of Connecticut, Connecticut Financial Center, 157 Church Street, New Haven, CT 06510. During the public comment period, the proposed Consent Decrees may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* Copies of the proposed Consent Decrees may 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 of the any of the proposed Consent Decrees, please enclose a check in the amount of $159.50 for the *United States* v. *American Hoechst Corp.* settlement (25 cent per page reproduction cost), $65.75 for the *United States* v. *A. R. Sandri, Inc.* settlement; and/or $5.25 for the *United States* v. *M. Swift & Sons, Inc.* settlement, payable to the U.S. Treasury.

Maureen M. Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E8–26431 Filed 11–5–08; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

October 31, 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 Amy Hobby on 202–693–4553 (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 Employment Standards Administration (ESA), 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 Standards Administration.

Type of Review: Extension without change of an existing OMB Control Number.

Title of Collection: Work Experience and Career Exploration Programs (29 CFR 570.35a).

OMB Control Number: 1215–0121.

Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 280.

Total Estimated Annual Burden Hours: 14,145.

Total Estimated Annual Costs Burden: $3.

Description: The Department's regulations at 29 CFR 570.35a require State educational agencies to file applications for approval of Work Experience and Career Explorations Programs (WECEP), which provide exceptions to the child labor regulations issued under the Fair Labor Standards Act. State educational agencies are also required to maintain certain records with respect to approved WECEP programs. For additional information, see related notice published at 73 FR 45789 on August 6, 2008.

Darrin A. King,

Departmental Clearance Officer.

[FR Doc. E8–26437 Filed 11–5–08; 8:45 am]

BILLING CODE 4510–27–P

LEGAL SERVICES CORPORATION

Notice of Availability of Calendar Year 2009 Competitive Grant Funds

AGENCY: Legal Services Corporation.

ACTION: Solicitation for proposals for the provision of civil legal services.

SUMMARY: The Legal Services Corporation (LSC) is the national organization charged with administering Federal funds provided for civil legal services to low-income people. LSC hereby announces the availability of competitive grant funds for the provision of a full range of civil legal services to eligible clients in Wyoming. Grants will be awarded in or around April 2009. The estimated annualized grant amounts for service areas in Wyoming are: $478,874 for the provision of civil legal services to the general low-income population throughout the state (i.e., service area WY–4); $12,054 for the provision of civil legal services to the migrant farmworker population throughout the state (i.e., service area MWY); and $167,794 for the provision of civil legal services to the Native American population throughout the state (i.e., service area NWY–1). The grant will be awarded in or around April 2009.

DATES: See Supplementary Information section for grants competition dates.

ADDRESSES: Legal Services Corporation—Competitive Grants, 3333 K Street, NW., Third Floor, Washington, DC 20007–3522.

FOR FURTHER INFORMATION CONTACT: Office of Program Performance by e-mail at *competition@lsc.gov*, or visit the grants competition Web site at *www.grants.lsc.gov*.

SUPPLEMENTARY INFORMATION: The Request for Proposals (RFP) is available at *http://www.grants.lsc.gov*. Once at the Web site, click on *FY 2009 Request For Proposals Narrative Instruction* to access the RFP and other information pertaining to the LSC competitive grants process. Refer to the RFP for instructions on preparing the grant proposal; the regulations and guidelines governing LSC funding; the definition of a full range of legal services; and grant proposal submission requirements.

Applicants must file a Notice of Intent to Compete (NIC; RFP Form-H) to participate in the competitive grants process. The deadline for filing the NIC is December 15, 2008, 5 p.m., E.D.T. The deadline for filing grant proposals is January 26, 2009, 5 p.m., E.D.T.

The dates shown in this notice for filing the NIC and the grant proposals supersede the dates in the RFP. All other instructions, regulations, guidelines, definitions, and grant proposal submission requirements remain in effect unless otherwise noted.

The following persons, groups, and entities are qualified applicants who may submit a Notice of Intent to Compete (NIC; RFP Form-H) and an application to participate in the competitive grants process: (1) Current recipients of LSC grants; (2) non-profit organizations that have as a purpose the provision of legal assistance to eligible clients; (3) private attorneys, groups of attorneys or law firms; (5) state or local governments; and (6) sub-state regional planning and coordination agencies that are composed of sub-state areas and whose governing boards are controlled by locally elected officials.

LSC will not fax the RFP to interested parties. Interested parties are asked to visit *http://www.grants.lsc.gov* regularly for updates on the LSC competitive grants process.

Dated: November 3, 2008.

Janet LaBella,

Director, Office of Program Performance.

[FR Doc. E8–26527 Filed 11–5–08; 8:45 am]

BILLING CODE 7050–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME AND DATE: 9:30 a.m., Thursday, November 13, 2008 and Friday, November 14, 2008.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza, SW., Washington, DC 20594.

STATUS: The one item is open to the public.

MATTERS TO BE CONSIDERED: 7975B *Highway Accident Report—Collapse of I–35W Highway Bridge, Minneapolis, Minnesota, August 1, 2007* (HWY–07–MH–024).

NEWS MEDIA CONTACT: Telephone: (202) 314–6100.

Individuals requesting specific accommodations should contact Rochelle Hall at (202) 314–6305 by Friday, November 7, 2008.

The public may view the meeting via a live or archived Webcast by accessing a link under ''News & Events'' on the NTSB home page at *http://www.ntsb.gov*.

FOR FURTHER INFORMATION CONTACT: Vicky D'Onofrio, (202) 314–6410.

Dated: November 3, 2008.

Vicky D'Onofrio,

Federal Register Liaison Officer.

[FR Doc. E8–26556 Filed 11–4–08; 11:15 am]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Numbers 052–031 and 052–032]

Exelon Nuclear Texas Holdings, LLC; Acceptance for Docketing of an Application for Combined License (Col) for Victoria County Station, Units 1 and 2

On September 3, 2008, the U. S. Nuclear Regulatory Commission (NRC, the Commission) received a combined license (COL) application from Exelon Nuclear Texas Holdings, LLC, dated September 2, 2008, filed pursuant to Section 103 of the Atomic Energy Act and Subpart C of Part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants,'' of Title 10 of the Code of Federal Regulations (10 CFR Part 52). The site location is in Victoria County, Texas and identified as the Victoria County Station, Units 1 and 2. A notice of receipt and availability of this application was previously published in the **Federal Register** (73 FR 56867 on September 30, 2008).

The NRC staff has determined that Exelon Nuclear Texas Holdings, LLC has submitted information in accordance with 10 CFR Part 2, ''Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders,'' and Part 52 that is sufficiently complete and acceptable for docketing. The docket numbers established for this application are 52–031 (Unit 1) and 52–032 (Unit 2).

The NRC staff will perform a detailed technical review of the application. Docketing of the COL application does not preclude the NRC from requesting additional information from the applicant as the review proceeds, nor does it predict whether the Commission will grant or deny the application. The Commission will conduct a hearing in accordance with Subpart L of 10 CFR Part 2; the notice of hearing and opportunity to intervene will be published at a later date. The Commission will receive a report on the application from the Advisory Committee on Reactor Safeguards in accordance with 10 CFR 52.87. If the Commission finds that the application meets the applicable standards of the Atomic Energy Act and the Commission's regulations, and that required notifications to other agencies and bodies have been made, the Commission will issue a COL, in the form and containing conditions and limitations that the Commission finds appropriate and necessary.

A copy of the application is available for public inspection at the Commission's Public Document Room located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. The application is also available at *http://www.nrc.gov/reactors/new-reactors/col.html* and is 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.* (The ADAMS Accession No. for the application cover letter is ML082540469). Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC Public Document Room staff by telephone at 1–(800)–397–4209, (301)–415–4737 or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 30th day of October 2008.

For the Nuclear Regulatory Commission.

Mark E. Tonacci,

Senior Project Manager, ESBWR/ABWR Projects Branch 2, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. E8–26461 Filed 11–5–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 03010576]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment to Byproduct Materials License No. 06–01450–47, for Unrestricted Release of the University of Connecticut's Noank Marine Research Laboratory Facility in Noank, CT

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of Environmental Assessment and Finding of No Significant Impact for License Amendment.

FOR FURTHER INFORMATION CONTACT: Steven R. Courtemanche, Health Physicist, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I, 475 Allendale Road; telephone: (610) 337–5075; fax number: (610) 337–5269; or by e-mail: *steven.courtemanche@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to byproduct materials License No. 06–01450–47. This license is held by the University of Connecticut (the Licensee), for numerous University facilities and campuses located within the State of Connecticut, including its Noank Marine Research Laboratory (the Facility), located in Noank, Connecticut. Issuance of the amendment would authorize release of the Facility for unrestricted use. The Licensee requested this action in a letter dated March 3, 2008. The NRC has prepared an Environmental Assessment (EA) in support of this proposed action in accordance with the requirements of Title 10, Code of Federal Regulations (CFR), Part 51 (10 CFR Part 51). Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate with respect to the proposed action. The amendment will be issued to the Licensee following the publication of this FONSI and EA in the **Federal Register**.

II. Environmental Assessment

Identification of Proposed Action

The proposed action would approve the Licensee's March 3, 2008, license amendment request, resulting in release of the Facility for unrestricted use. License No. 06–01450–47 was issued on March 21, 1975, pursuant to 10 CFR Part 30 and 70, and has been amended periodically since that time. This license authorized the Licensee to use unsealed forms of byproduct material, sealed sources of byproduct material, and sealed sources of special nuclear material for purposes of conducting research and development activities on laboratory bench tops and in hoods, animal studies, teaching and training of students, calibration of instruments, and irradiation of materials.

The Facility is located in a commercial area and consists 8,000 square feet of office space and laboratories. Within the Facility, use of licensed materials was confined to 800 square feet of space in Rooms 201 and 202.

On June 8, 1992, the Licensee ceased licensed activities and initiated a survey and decontamination of the Facility. Based on the Licensee's historical knowledge of the site and the conditions of the Facility, the Licensee determined that only routine decontamination activities, in accordance with their NRC-approved operating radiation safety procedures, were required. The Licensee was not required to submit a decommissioning plan to the NRC because worker cleanup activities and procedures are consistent with those approved for routine operations. The Licensee conducted surveys of the Facility and provided information to the NRC to demonstrate that it meets the criteria in Subpart E of 10 CFR Part 20 for unrestricted release.

Need for the Proposed Action

The Licensee has ceased conducting licensed activities at the Facility and seeks the unrestricted use of its Facility.

Environmental Impacts of the Proposed Action

The historical review of licensed activities conducted at the Facility shows that such activities involved use of the following radionuclides with half-lives greater than 120 days: hydrogen-3 and carbon-14, in unsealed form; and nickel-63, cobalt-60, and radium-226 in sealed form. Prior to performing the final status survey, the Licensee conducted decontamination activities, as necessary, in the areas of the Facility affected by these radionuclides. The Licensee conducted a final status survey on June 8, 1992. This survey covered Rooms 201 and 202 of the Noank Marine Research Laboratory. The final status survey report was attached to the Licensee's amendment request dated March 3, 2008. The Licensee elected to demonstrate compliance with the radiological criteria for unrestricted release as specified in 10 CFR 20.1402 by using the screening approach described in NUREG–1757, ''Consolidated NMSS Decommissioning Guidance,'' Volume 2. The Licensee used the radionuclide-specific derived concentration guideline levels (DCGLs), developed there by the NRC, which comply with the dose criterion in 10 CFR 20.1402. These DCGLs define the maximum amount of residual radioactivity on building surfaces, on equipment, on materials, and in soils that will satisfy the NRC requirements in Subpart E of 10 CFR Part 20 for unrestricted release. The Licensee's final status survey results were below these DCGLs and are in compliance with the As Low As Reasonably Achievable (ALARA) requirement of 10 CFR 20.1402. The NRC thus finds that the Licensee's final status survey results are acceptable.

Based on its review, the staff has determined that the affected environment and any environmental impacts associated with the proposed action are bounded by the impacts evaluated by the (Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities((NUREG–1496) Volumes 1–3 (ML042310492, ML042320379, and ML042330385). The staff finds there were no significant environmental impacts from the use of radioactive material at the Facility. The NRC staff reviewed the docket file records and the final status survey report to identify any non-radiological hazards that may have impacted the environment surrounding the Facility. No such hazards or impacts to the environment were identified. The NRC has identified no other radiological or non-radiological activities in the area that could result in cumulative environmental impacts.

The NRC staff finds that the proposed release of the Facility for unrestricted use is in compliance with 10 CFR 20.1402. Based on its review, the staff considered the impact of the residual radioactivity at the Facility and concluded that the proposed action will not have a significant effect on the quality of the human environment.

Environmental Impacts of the Alternatives to the Proposed Action

Due to the largely administrative nature of the proposed action, its environmental impacts are small. Therefore, the only alternative the staff considered is the no-action alternative, under which the staff would leave things as they are by simply denying the amendment request. This no-action alternative is not feasible because it conflicts with 10 CFR 30.36(d), requiring that decommissioning of byproduct material facilities be completed and approved by the NRC after licensed activities cease. The NRC's analysis of the Licensee's final status survey data confirmed that the Facility meets the requirements of 10 CFR 20.1402 for unrestricted release. Additionally, denying the amendment request would result in no change in current environmental impacts. The environmental impacts of the proposed action and the no-action alternative are therefore similar, and the no-action alternative is accordingly not further considered.

Conclusion

The NRC staff has concluded that the proposed action is consistent with the NRC's unrestricted release criteria specified in 10 CFR 20.1402. Because the proposed action will not significantly impact the quality of the human environment, the NRC staff concludes that the proposed action is the preferred alternative.

Agencies and Persons Consulted

NRC provided a draft of this Environmental Assessment to the State of Connecticut, Department of Environmental Protection, Division of Radiation for review on September 16, 2008. On September 17, 2008, the State of Connecticut, Department of Environmental Protection, Division of Radiation responded by e-mail. The State agreed with the conclusions of the EA, and otherwise had no comments.

The NRC staff has determined that the proposed action is of a procedural nature, and will not affect listed species or critical habitat. Therefore, no further consultation is required under Section 7 of the Endangered Species Act. The NRC staff has also determined that the proposed action is not the type of activity that has the potential to cause effects on historic properties. Therefore, no further consultation is required under Section 106 of the National Historic Preservation Act.

III. Finding of No Significant Impact

The NRC staff has prepared this EA in support of the proposed action. On the basis of this EA, the NRC finds that there are no significant environmental impacts from the proposed action, and that preparation of an environmental impact statement is not warranted. Accordingly, the NRC has determined that a Finding of No Significant Impact is appropriate.

IV. Further Information

Documents related to this action, including the application for license amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The documents related to this action are listed below, along with their ADAMS accession numbers.

[1]. University of Connecticut letter dated February 21, 2008 (ML080710534);

[2]. University of Connecticut letter dated March 3, 2008 (ML080800358);

[3]. University of Connecticut letter dated May 15, 2008 (ML081500274);

[4]. NUREG–1757, ''Consolidated NMSS Decommissioning Guidance;''

[5]. Title 10 Code of Federal Regulations, Part 20, Subpart E, ''Radiological Criteria for License Termination;''

[6]. Title 10, Code of Federal Regulations, Part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions;'' and

[7]. NUREG–1496, ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities.''

If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.* These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at King of Prussia, Pennsylvania, this 29th day of October 2008.

For the Nuclear Regulatory Commission.

James P. Dwyer,

Chief, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I.

[FR Doc. E8–26457 Filed 11–5–08; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[Docket Nos. 72–1004, 70–1426, 72–1027, 72–1007, 72–1008, 72–1002, 72–1003, 72–1015, 72–1025, and 70–3020]

EA–08–289; In the Matter of: Certain 10 CFR Part 72 Certificate Holders Who Have Near-Term Plans To Access Safeguards Information Order Imposing Safeguards Information Protection Requirements and Fingerprinting and Criminal History Check Requirements for Access to Certain Safeguards Information (Effective Immediately)

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Issuance of Order Imposing Safeguards Information Protection Requirements and Fingerprinting and Criminal History Check Requirements for Access to Certain Safeguards Information.

FOR FURTHER INFORMATION CONTACT: L. Raynard Wharton, Senior Project Manager, Licensing and Inspection Directorate, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards (NMSS), U.S. Nuclear Regulatory Commission (NRC), Rockville, MD 20852. Telephone: (301) 492–3316; fax number: (301) 492–3350; e-mail: *raynard.wharton@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

Pursuant to 10 CFR 2.106, NRC (or the Commission) is providing notice, in the matter of Certain 10 CFR Part 72 Certificate Holders Who Have Near-Term Plans To Access Safeguards Information Order Imposing Safeguards Information Protection Requirements and Fingerprinting and Criminal History Check Requirements for Access to Certain Safeguards Information (Effective Immediately).

II. Further Information

I

Transnuclear, Inc., Holtec International, NAC International, and EnergySolutions Corporation, have been issued certificates, by the U.S. Nuclear Regulatory Commission (NRC or the Commission), certifying dry cask storage designs in accordance with the Atomic Energy Act of 1954, as amended, (AEA) and Title 10 of the *Code of Federal Regulations* (10 CFR) part 72. These entities will be referred to herein as ''the affected vendors.'' On August 8, 2005, the Energy Policy Act of 2005 (EPAct) was enacted. Section 652 of the EPAct

amended section 149 of the AEA to require fingerprinting and a Federal Bureau of Investigation (FBI) identification and criminal history records check of any person who is to be permitted to have access to Safeguards Information (SGI).[1] The EPAct fingerprinting and criminal history check requirements for access to SGI were immediately effective upon enactment of the EPAct. Although the EPAct permits the Commission, by rule, to except certain categories of individuals from the fingerprinting requirement, which the Commission has done [*see* 10 CFR 73.59, 71 FR 33,989 (June 13, 2006)], it is unlikely that licensee or certificate holder employees are excepted from the fingerprinting requirement by the ''fingerprinting-relief'' rule. Individuals relieved from fingerprinting and criminal history checks under the relief rule include (a) Federal, State, and local officials and law enforcement personnel; (b) Agreement State inspectors who conduct security inspections on behalf of NRC; (c) members of Congress and certain employees of members of Congress or Congressional Committees; and (d) representatives of the International Atomic Energy Agency or certain foreign government organizations. In addition, individuals who have a favorably decided U.S. Government criminal history check within the last five (5) years, and individuals who have active Federal security clearances (provided in either case that they make available the appropriate documentation), have satisfied the EPAct fingerprinting requirement and need not be fingerprinted again. Therefore, in accordance with section 149 of the AEA, as amended by the EPAct, the Commission is imposing additional requirements for access to SGI, as set forth by this Order, so that affected licensees and certificate holders can obtain and grant access to SGI.[2] This Order also imposes requirements for access to SGI by any person,[3] from any person, whether or not a licensee, applicant, or certificate holder of the Commission or Agreement States. The SGI that is the subject of this Order is all SGI including aircraft impact-related data, which will be presented to the affected vendors at a one-day workshop at NRC. This aircraft impact-related information is hereby designated as SGI in accordance with section 147 of the AEA.

II

The Commission has broad statutory authority to protect and prohibit the unauthorized disclosure of SGI. Section 147 of the AEA grants the Commission explicit authority to issue such Orders as necessary to prohibit the unauthorized disclosure of SGI. Furthermore, section 149 of the AEA requires fingerprinting and an FBI identification and a criminal history records check of each individual who seeks access to SGI. In addition, no person may have access to SGI unless the person has an established need-to-know the information.

To provide assurance that appropriate measures are being implemented to comply with the fingerprinting and criminal history check requirements for access to SGI, the affected vendors shall implement the requirements of this Order. In addition, pursuant to 10 CFR 2.202, I find that, in consideration of the common defense and security matters identified above, which warrant the issuance of this Order, the public health, safety, and interest require that this Order be effective immediately.

III

Accordingly, pursuant to sections 147, 149, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, Parts 72 and 73, it is hereby ordered, effective immediately, that the affected vendors and all other persons who seek or obtain access to safeguards information as described herein shall comply with the requirements set forth in 10 CFR 73.21 and this order.

A.1. No person may have access to SGI unless that person has a need-to-know the SGI, has been fingerprinted, or has a favorably decided FBI identification and criminal history records check, and satisfies all other applicable requirements for access to SGI. Fingerprinting and the FBI identification and criminal history records check are not required, however, for any person who is relieved from that requirement by 10 CFR 73.59 [71 FR 33989 (June 13, 2006)], or who has a favorably decided U.S. Government criminal history check within the last five (5) years, or who has an active Federal security clearance, provided in the latter two cases, that the appropriate documentation is made available to the affected vendor's NRC-approved reviewing official.

2. No person may have access to any SGI if NRC has determined, based on fingerprinting and an FBI identification and criminal history records check, that the person may not have access to SGI.

3. For SGI designated by the Commission as containing aircraft impact-related information, the affected vendor may provide SGI designated by this Order to individuals (such as foreign nationals, U.S. citizens living in foreign countries, or individuals under the age of 18) for whom fingerprinting and an FBI criminal history records check is not reasonably expected to yield sufficient criminal history information to form the basis of an informed decision on granting access to SGI, provided that the individual satisfies the requirements of this Order, and that the affected vendor has implemented measures, in addition to those set forth in this Order, to ensure that the individual is suitable for access to the SGI designated by this Order. Such additional measures must include, but are not limited to, equivalent criminal history records checks conducted by a local, State, or foreign governmental agency; and/or enhanced background checks, including employment and credit history. NRC must review these additional measures and approve them in writing. These additional measures are not required for individuals described in this paragraph who are seeking access to SGI that is not related to the aircraft impact-related SGI.

B. No person may provide SGI to any other person except in accordance with Condition III.A. Prior to providing SGI to any person, a copy of this Order shall be provided to that person.

C.1. The affected vendor shall, within twenty (20) days of the date of this Order, establish and maintain a fingerprinting program that meets the requirements of the Attachment to this Order.

2. The affected vendor shall, within twenty (20) days of the date of this Order, submit the fingerprints of one (1) individual who needs access to SGI, and

[1] Safeguards Information is a form of sensitive, unclassified, security-related information that the Commission has the authority to designate and protect under section 147 of the AEA.

[2] The storage and handling requirements for certain SGI have been modified from the existing 10 CFR Part 73 SGI requirements that require a higher level of protection; such SGI is designated as Safeguards Information—Modified Handling (SGI–M). However, the information subject to the SGI–M handling and protection requirements is SGI, and licensees and other persons who seek or obtain access to such SGI are subject to this Order.

[3] Person means: (1) Any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, government agency other than the Commission or the U.S. Department of Energy (DOE), except that the DOE shall be considered a person with respect to those DOE facilities specified in section 202 of the Energy Reorganization Act of 1974 (88 Stat. 1244); (2) any State or any political subdivision of, or any political entity within a State, any foreign government or nation or any political subdivision of any such government or nation, or other entity; and (3) any legal successor, representative, agent, or agency of the foregoing.

who the affected vendor nominates as the ''reviewing official'' for determining access to SGI by other individuals and has an established need-to-know the information. NRC will determine whether this individual (or any subsequent reviewing official) may have access to SGI and, therefore, will be permitted to serve as the affected vendor's reviewing official.[4] The affected vendor may, at the same time or later, submit the fingerprints of other individuals for whom access to SGI is sought. Fingerprints shall be submitted and reviewed in accordance with the procedures described in the Attachment of this Order.

3. The affected vendor may allow any individual who currently has access to SGI, in accordance with the previously issued NRC Orders, to continue to have access to previously designated SGI, without being fingerprinted, pending a decision by the NRC-approved reviewing official (based on fingerprinting, an FBI criminal history records check, and a trustworthy and reliability determination) that the individual may continue to have access to SGI. The affected vendor shall make determinations on continued access to SGI, within ninety (90) days of the date of this Order, in part on the results of the fingerprinting and criminal history check, for those individuals who were previously granted access to SGI before the issuance of this Order.

4. The affected vendor shall, in writing, within twenty (20) days of the date of this Order, notify the Commission: (1) If it is unable to comply with any of the requirements described in the Order, including the Attachment; or (2) if compliance with any of the requirements is unnecessary in its specific circumstances. The notification shall provide the affected vendor's justification for seeking relief from, or variation of, any specific requirement.

The affected vendor responses to C.1., C.2., C.3., and C.4., above, shall be submitted to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. In addition, responses shall be marked as ''Security-Related Information—Withhold under 10 CFR 2.390.''

The Director, Office of Nuclear Material Safety and Safeguards, may, in writing, relax or rescind any of the above conditions upon demonstration of good cause by the affected vendor.

[4] The NRC's determination of this individual's access to SGI, in accordance with the process described in Enclosure 3 to the transmittal letter of this Order, is an administrative determination that is outside the scope of this Order.

IV

In accordance with 10 CFR 2.202, the affected vendor must, and any other person adversely affected by this Order may, submit an answer to this Order within 20 days of the date of the Order. In addition, the affected vendor, and any other person adversely affected by this Order, may request a hearing on this Order, within 20 days of the date of the Order. Where good cause is shown, consideration will be given to extending the time to answer or request a hearing. A request for extension of time must be made, in writing, to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and include a statement of good cause for the extension.

The answer may consent to this Order. If the answer includes a request for a hearing, it shall, under oath or affirmation, specifically set forth the matters of fact and law on which the affected vendor relies and the reasons as to why the Order should not have been issued. If a person other than the affected vendor requests a hearing, that person shall set forth, with particularity, the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d).

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding before the submission of a request for hearing or petitions to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule, which NRC promulgated in August 2007, 72 FR 49139 (August 28, 2007) and codified in pertinent part at 10 CFR Part 2, Subpart B. The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases, to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver, in accordance with the procedures described below.

To comply with the procedural requirements associated with E-Filing, at least ten (10) days before the filing deadline, the requestor must contact the Office of the Secretary, by e-mail, at *Hearing.Docket@nrc.gov,* or by calling (301) 415–1677, to request: (1) A digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any NRC proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding [even in instances when the requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate]. Each requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html.* Information about applying for a digital ID certificate is also available on NRC's public Web site, at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.*

Once a requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, he/she can then submit a request for a hearing through EIE. Submissions should be in Portable Document Format, in accordance with NRC guidance, available on the NRC public Web site, at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the filer submits its document through EIE. To be timely, electronic filings must be submitted to the EIE system no later than 11:59 p.m., Eastern Time, on the due date. On receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, any others who wish to participate in the proceeding (or their counsel or representative) must apply for, and receive, digital ID certificates, before hearing requests are filed, so that they may obtain access to the documents via the E-Filing system.

A person filing electronically may seek assistance through the ''Contact-Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The help line number is (800) 397–4209 or, locally (301) 415–4737.

Participants who believe that they have good cause for not submitting documents electronically must file motions, in accordance with 10 CFR 2.302(g), with their initial paper filings,

requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First-class mail, addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete, by first-class mail, as of the time of deposit in the mail—or by courier, express mail, or expedited delivery service, on depositing the document with the provider of the service.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket, which is available to the public at *http://ehd.nrc.gov/EHD Proceeding/home.asp,* unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers, in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair-Use application, Participants are requested not to include copyrighted materials in their works.

If a hearing is requested by the affected vendor or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the affected vendor may, in addition to requesting a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the grounds that the Order, including the need for immediate effectiveness, is not based on adequate evidence, but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions, as specified in section III, shall be final twenty (20) days from the date of this Order, without further Order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions, as specified in section III, shall be final when the extension expires, if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated this 28th day of October 2008.

For the Nuclear Regulatory Commission.

Michael F. Weber,

Director, Office of Nuclear Material Safety and Safeguards.

Attachment: Requirements for Fingerprinting and Criminal History Checks of Individuals When Licensee's and/or Certificate Holder's Reviewing Official Is Determining Access to Safeguards Information

General Requirements

Licensees and certificate holders shall comply with the requirements of this attachment.

A.1. Each licensee and/or certificate holder subject to the provisions of this attachment shall fingerprint each individual who is seeking or permitted access to Safeguards Information (SGI). The licensee and certificate holder shall review and use the information received from the Federal Bureau of Investigation (FBI) and ensure that the provisions contained in the subject Order and this attachment are satisfied.

2. The licensee and/or certificate holder shall notify each affected individual that the fingerprints will be used to secure a review of his/her criminal history record and inform the individual of the procedures for revising the record or including an explanation in the record, as specified in the ''Right to Correct and Complete Information'' section of this attachment.

3. Fingerprints need not be taken if an employed individual (e.g., a licensee and/or certificate holder employee, contractor, manufacturer, or supplier) is relieved from the fingerprinting requirement by 10 CFR 73.59, has a favorably decided U.S. Government criminal history check within the last five (5) years, or has an active Federal security clearance. Written confirmation from the Agency/employer that granted the Federal security clearance or reviewed the criminal history check must be provided. The licensee and/or certificate holder must retain this documentation for a period of three (3) years from the date the individual no longer requires access to SGI associated with the licensee's and/or certificate holder's activities.

4. All fingerprints obtained by the licensee and/or certificate holder pursuant to this Order must be submitted to the Commission for transmission to the FBI.

5. The licensee and/or certificate holder shall review the information received from the FBI and consider it, in conjunction with the trustworthy and reliability requirements of the previously issued U.S. Nuclear Regulatory Commission (NRC or Commission) Orders, in making a determination of whether to grant access to SGI to individuals who have a need-to-know the SGI.

6. The licensee and/or certificate holder shall use any information obtained as part of a criminal history records check solely for the purpose of determining an individual's suitability for access to SGI.

7. The licensee and/or certificate holder shall document the basis for its determination whether to grant access to SGI.

B. The licensee and/or certificate holder shall notify NRC of any desired change in reviewing officials. NRC will determine whether the individual nominated as the new reviewing official may have access to SGI, based on a previously obtained or new criminal history check, and, therefore, will be permitted to serve as the licensee's and/or certificate holder's reviewing official.

Prohibitions

A licensee and/or certificate holder shall not base a final determination to deny an individual access to SGI solely on the basis of information received from the FBI involving: (1) An arrest more than one (1) year old for which there is no information of the disposition of the case; or (2) an arrest that resulted in dismissal of the charge, or an acquittal.

A licensee and/or certificate holder shall not use information received from a criminal history check obtained pursuant to this Order in a manner that would infringe upon the rights of any individual, under the First Amendment to the Constitution of the United States, nor shall the licensee and/or certificate holder use the information in any way that would discriminate among individuals on the basis of race, religion, national origin, sex, or age.

Procedures for Processing Fingerprint Checks

For the purpose of complying with this Order, licensees and/or certificate holders shall, using an appropriate method listed in 10 CFR 73.4, submit to NRC's Division of Facilities and Security, Mail Stop T–6E46, one completed, legible standard fingerprint card (Form FD–258, ORIMDNRCOOOZ) or, where practicable, other fingerprint

records for each individual seeking unescorted access to an independent spent fuel storage installation, to the Director of the Division of Facilities and Security, marked for the attention of the Division's Criminal History Check Section. Copies of these forms may be obtained by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by calling (301) 415–5877, or by e-mail to *forms@nrc.gov.* Practicable alternative formats are set forth in 10 CFR 73.4. The licensee and/or certificate holder shall establish procedures to ensure that the quality of the fingerprints taken results in minimizing the rejection rate of fingerprint cards because of illegible or incomplete cards.

NRC will review submitted fingerprint cards for completeness. Any Form FD–258 fingerprint record containing omissions or evident errors will be returned to the licensee and/or certificate holder for corrections. The fee for processing fingerprint checks includes one re-submission if the initial submission is returned by the FBI because the fingerprint impressions cannot be classified. The one free resubmission must have the FBI Transaction Control Number reflected on the re-submission. If additional submissions are necessary, they will be treated as initial submittals and will require a second payment of the processing fee.

Fees for processing fingerprint checks are due upon application. The licensee and/or certificate holder shall submit payment of the processing fees electronically. To be able to submit secure electronic payments, licensees and/or certificate holders will need to establish an account with Pay.Gov (*https://www.pay.gov*). To request an account, the licensee and/or certificate holder shall send an e-mail to *det@nrc.gov.* The e-mail must include the licensee's and/or certificate holder's company name, address, point of contact (POC), POC e-mail address, and phone number. NRC will forward the request to Pay.Gov, who will contact the licensee and/or certificate holder with a password and user lD. Once licensees and/or certificate holders have established an account and submitted payment to Pay.Gov, they shall obtain a receipt. A licensee and/or certificate holder shall submit the receipt from Pay.Gov to NRC along with fingerprint cards. For additional guidance on making electronic payments, contact the Facilities Security Branch, Division of Facilities and Security, at (301) 415–7739. Combined payment for multiple applications is acceptable.

The application fee (currently $36) is the sum of the user fee charged by the FBI for each fingerprint card or other fingerprint record submitted by NRC on behalf of a licensee and/or certificate holder, and an NRC processing fee, which covers administrative costs associated with NRC handling of licensee and/or certificate holder fingerprint submissions. The Commission will directly notify licensees and/or certificate holders subject to this regulation of any fee changes.

The Commission will forward to the submitting licensee and/or certificate holder all data received from the FBI as a result of the licensee's and/or certificate holder's application(s) for criminal history records checks, including the FBI fingerprint record.

Right to Correct and Complete Information

Prior to any final adverse determination, the licensee and/or certificate holder shall make available to the individual the contents of any criminal records, obtained from the FBI for the purpose of assuring correct and complete information. The individual's written confirmation of receipt of this notification must be maintained by the licensee and/or certificate holder for a period of one (1) year from the date of the notification. If, after reviewing the record, an individual believes that it is incorrect or incomplete in any respect and wishes to change, correct, or update the alleged deficiency, or to explain any matter in the record, the individual may initiate challenge procedures. These procedures include either direct application, by the individual challenging the record to the agency (i.e., law enforcement agency) that contributed the questioned information, or direct challenge as to the accuracy or completeness of any entry on the criminal history record, to the Assistant Director, Federal Bureau of Investigation Identification Division, Washington, DC 20537–9700 (as set forth in 28 CFR 16.30 through 16.34). In the latter case, the FBI forwards the challenge to the agency that submitted the data and requests that agency to verify or correct the challenged entry. Upon receipt of an official communication directly from the agency that contributed the original information, the FBI Identification Division makes any changes necessary in accordance with the information supplied by that agency. The licensee and/or certificate holder must provide at least ten (10) days for an individual to initiate an action challenging the results of an FBI criminal history records check after the record is made available for his/her review. The licensee and/or certificate holder may make a final SGI access determination based on the criminal history record only upon receipt of the FBI's ultimate confirmation or correction of the record. Upon a final adverse determination on access to SGI, the licensee and/or certificate holder shall provide the individual its documented basis for denial. Access to SGI shall not be granted to an individual during the review process.

Protection of Information

1. Each licensee and/or certificate holder that obtains a criminal history record on an individual pursuant to this Order shall establish and maintain a system of files and procedures for protecting the record and the personal information from unauthorized disclosure.

2. The licensee and/or certificate holder may not disclose the record or personal information collected and maintained to persons other than the subject individual, his/her representative, or to those who have a need to access the information in performing assigned duties in the process of determining access to SGI. No individual authorized to have access to the information may re-disseminate the information to any other individual who does not have a need-to-know.

3. The personal information obtained on an individual from a criminal history records check may be transferred to another licensee and/or certificate holder if the gaining licensee and/or certificate holder receives the individual's written request to re-disseminate the information contained in his/her file, and the gaining licensee and/or certificate holder verifies information such as the individual's name, date of birth, social security number, sex, and other applicable physical characteristics for identification purposes.

4. The licensee and/or certificate holder shall make criminal history records, obtained under this section, available for examination by an authorized NRC representative, to determine compliance with the regulations and laws.

5. The licensee and/or certificate holder shall retain all fingerprint and criminal history records received from the FBI, or a copy, if the individual's file has been transferred, for three (3) years after termination of employment or determination of access to SGI. After the required three (3)-year period, these documents shall be destroyed by a

method that will prevent reconstruction of the information in whole or in part.

[FR Doc. E8–26464 Filed 11–5–08; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Andean Trade Preference Act (ATPA), as Amended: Notice Regarding the 2008 Annual Review

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: With respect to the Annual Review under the ATPA, the Office of the United States Trade Representative (USTR) received no new petitions in August-September 2008 to review certain practices in a beneficiary developing country to determine whether such country is in compliance with the ATPA eligibility criteria. USTR received updates to two petitions that are currently under review and a request to withdraw a petition that was under review. This notice specifies the status of the petitions filed in prior years that have remained under review. This notice does not relate to the Bolivia-specific review initiated on October 1, 2008 (73 FR 57158).

FOR FURTHER INFORMATION CONTACT: Bennett M. Harman, Deputy Assistant U.S. Trade Representative for Latin America, at (202) 395–9446.

SUPPLEMENTARY INFORMATION: The ATPA (19 U.S.C. 3201 *et seq.*), as renewed and amended by the Andean Trade Promotion and Drug Eradication Act of 2002 (ATPDEA) in the Trade Act of 2002 (Pub. L. 107–210) and the Act to Extend the Andean Trade Preference Act (Pub. L. 110–436), provides trade benefits for eligible Andean countries. Pursuant to section 3103(d) of the ATPDEA, USTR promulgated regulations (15 CFR part 2016) (68 FR 43922) regarding the review of eligibility of countries for the benefits of the ATPA, as amended. The 2008 Annual ATPA Review is the fifth such review to be conducted pursuant to the ATPA regulations.

In a **Federal Register** notice dated August 14, 2008, USTR initiated the 2008 ATPA Annual Review and announced a deadline of September 15, 2008 for the filing of petitions (73 FR 47633). Chevron submitted information updating the petition it originally filed in 2004, which remains under review. USTR also received updated information from the U.S./Labor Education in the Americas Project (US/LEAP) concerning its petition related to worker rights in Ecuador, which has been under consideration since the 2003 ATPA review. The AFL–CIO filed a submission which indicated that it is no longer seeking a removal of ATPA benefits from Ecuador over worker rights issues. The Trade Policy Staff Committee (TPSC) is therefore terminating its review of the AFL–CIO petition filed in 2003.

Following is the list of all petitions from prior years that will remain under review through December 31, 2009, which is the period that the ATPA is in effect:

Ecuador Human Rights Watch.
Ecuador U.S./Labor Education in the Americas Project.
Ecuador Chevron Texaco.
Peru Princeton Dover.
Peru Duke Energy.

Carmen Suro-Bredie,

Chairman, Trade Policy Staff Committee.

[FR Doc. E8–26546 Filed 11–5–08; 8:45 am]

BILLING CODE 3190–W9–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. USTR–2008–0036]

Review of Action Taken in Connection With WTO Dispute Settlement Proceedings on the European Communities' Measures Concerning Meat and Meat Products

AGENCY: Office of the United States Trade Representative.

ACTION: Request for comments.

SUMMARY: The interagency section 301 Committee is soliciting written comments on possible modifications to the action taken by the United States Trade Representative (''Trade Representative'') in connection with the World Trade Organization (''WTO'') authorization in the *EC-Beef Hormones* dispute to the United States to suspend concessions and related obligations with respect to the European Communities (''EC''). The *EC-Beef Hormones* dispute concerned the EC's ban on the import of U.S. meat and meat products produced from animals treated with any of six hormones for growth promotion purposes. Annex I to this notice contains a list of EC products with respect to which the United States is currently imposing increased rates of duty (100 percent *ad valorem*) pursuant to the WTO's authorization. Annex II to this notice contains a list of potential alternative products under consideration for the imposition of increased duties. Comments are requested with respect to (i) whether products listed in Annex I should be removed from the list or remain on the list (and if a product remains on the list, whether the currently applied rate of duty should be increased), (ii) whether products listed in Annex II should be included on a revised list and be subjected to increased rates of duty, and (iii) the products of which member States of the EC should be subjected to increased rates of duty.

DATES: To be assured of consideration, comments should be submitted by 5 p.m. on December 8, 2008.

ADDRESSES: Comments should be submitted (i) electronically via the Internet at *http://www.regulations.gov,* or (ii) by fax to Sandy McKinzy at (202) 395–3640. For documents sent by fax, USTR requests that the submitter provide a confirmation copy to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Gwendolyn Diggs, Staff Assistant to the section 301 Committee, (202) 395–5830, for questions concerning procedures for filing submissions in response to this notice; Roger Wentzel, Director, Agricultural Affairs, (202) 395–6127 or David Weiner, Director for the European Union, (202) 395–4620 for questions concerning the *EC-Beef Hormones* dispute; or William Busis, Associate General Counsel (202) 395–3150 and Chair of the Section 301 Committee, for questions concerning procedures under Section 301. For further information on using the *http://www.regulations.gov* Web site, please consult the resources provided on the Web site by clicking on ''How to Use This Site'' on the left side of the home page.

SUPPLEMENTARY INFORMATION:

A. The EC-Beef Hormones Case

The EC bans the import of beef and beef products produced from animals to which any of six hormones [1] have been administered for growth promotion purposes. The effect of the EC ban is to prohibit the import of substantially all U.S.-produced beef and beef products. In February 1998, the WTO Dispute Settlement Body (''DSB'') found that the EC ban was inconsistent with EC obligations under the WTO Agreement. In July 1999, a WTO arbitrator determined that the EC import ban on U.S. beef and beef products has nullified or impaired U.S. benefits under the WTO Agreement in the amount of $116.8 million each year. On July 26, 1999, the DSB authorized the

[1] The six hormones at issue are estradiol 17-β, testosterone, progesterone, zeranol, trenbolone acetate (''TBA'') and melengestrol acetate (''MGA'').

United States to suspend the application to the EC, and member States thereof, of WTO tariff concessions and related obligations covering trade in an amount of $116.8 million per year. Pursuant to that authorization, the Office of the United States Trade Representative (''USTR'') announced a list of EC products, reprinted in Annex I to this notice, that would be subject to a 100 percent rate of duty effective with respect to products entered, or withdrawn from warehouse, for consumption on or after July 29, 1999. (See 64 FR 40638.)

Since that time, the United States and the EC have continued to consult in an effort to resolve this dispute.

The EC argues that EC legislation of 2003 implementing the import ban on beef and beef products produced from animals treated with certain hormones brought the EC into compliance with its WTO obligations. In January 2005, the EC requested the establishment of a WTO dispute settlement panel to consider the EC claim that the United States was no longer authorized to suspend concessions as a result of the EC's adoption of the new legislation implementing the import ban. (See 70 FR 8655 for a description of this dispute brought by the EC.)

On October 16, 2008, the WTO Appellate Body issued a report rejecting the EC claim and confirming that the July 1999 DSB authorization to suspend concessions remains in effect unless and until the DSB adopts a report finding that the EC has brought its measures into compliance with WTO obligations.

B. Section 306 of the Trade Act of 1974, as Amended

Section 306(b)(2)(B) of the Trade Act provides for the periodic review and revision of section 301 actions taken in the course of a WTO dispute settlement proceeding. Section 306(b)(2)(B)(ii) provides exceptions in the event that (1) the USTR and the section 301 petitioner (or, if USTR self-initiated the section 301 investigation, the affected U.S. industry) agree that changing the action under section 301 is unnecessary, or (2) resolution of the case is imminent. Section 306 provides that the standard for revising actions is to select changes that are most likely to result in implementation of the DSB recommendations, or in achieving some other satisfactory resolution of the dispute. The provision also requires that lists of products subject to increased duties—both initially and after each of the periodic changes—include reciprocal goods of the U.S. industries affected by the measure at issue in the WTO dispute.

The USTR and the affected U.S. industry have agreed that changes in the action taken under section 301 in connection with the *EC-Beef Hormones* dispute have been unnecessary; accordingly, the exception under section 306(b)(2)(B) is currently in effect.

As noted, on October 16, 2008, the WTO Appellate Body issued a report confirming that DSB authorization to suspend concessions remains in effect. No further WTO findings in this dispute are expected in the immediate future. In these circumstances, and as reflected in this notice, the Trade Representative is now considering revisions to the action taken in connection with the *EC-Beef Hormones* dispute and is revisiting the increased duties to ascertain whether any modifications are necessary or appropriate. Neither the publication of this notice, nor a possible decision by the Trade Representative to revise the prior action, should be construed as a determination with respect to whether or not the EC legislation of 2003 implementing the import ban on beef and beef products is consistent with WTO rules.

C. Section 307 of the Trade Act of 1974, as Amended

Section 307 of the Trade Act of 1974, as amended, provides for a review of actions taken under section 301, including actions taken in connection with a WTO dispute settlement proceeding. In particular, section 307 provides for the Trade Representative to conduct a review of—

(A) The effectiveness in achieving the objectives of section 301 of—

(i) Such action, and

(ii) Other actions that could be taken (including actions against other products or services), and

(B) The effects of such actions on the U.S. economy, including consumers.

D. Request for Public Comments

In order to assist in a possible revision to the action in accordance with section 306 of the Trade Act, and to provide information in connection with a review under section 307 of the Trade Act, the section 301 Committee seeks public comments with respect to the specific products on the lists in the Annexes to this notice. Annex I consists of products, which were drawn from the list in Annex II, currently subject to 100 percent duties in connection with the *EC-Beef Hormones* dispute. Annex II contains a list of alternative products under consideration for the possible imposition of increased duties.

Concerning the products listed in Annex I, the section 301 Committee invites comments with respect to whether particular products should be removed from the list or should remain on the list, and if a product remains on the list, whether the current 100 percent rate of duty is sufficiently high to achieve the objectives of encouraging a satisfactory resolution of the dispute. Concerning products listed in Annex II that are not currently subject to 100 percent duties, the section 301 Committee invites comments with respect to whether particular products should be included on a revised list and thus be subject to increased duties, and with respect to the rate of duty that would be best suited to the objective of encouraging a satisfactory resolution of the dispute.

The comments sought by the section 301 Committee with respect to particular products should address: (i) Whether maintaining or imposing increased duties on a particular product would be practicable or effective in terms of encouraging a favorable resolution of the dispute, and (ii) whether maintaining or imposing increased duties on a particular product would cause disproportionate economic harm to U.S. interests, including small- or medium-size businesses and consumers. In addition, the section 301 Committee requests comments on whether actions with respect to particular products should be taken with respect to products of all member States of the European Communities, or whether action should be taken with respect to products of one or more particular member States of the European Communities. The European Communities currently has 27 member States: Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom.

In the annexed product lists, the items with respect to which comments are requested are (1) classified in the indicated headings or subheadings of the Harmonized Tariff Schedule of the United States (''HTS''); and (2) the product of the indicated member States of the European Communities. The product descriptions in the annexes are for information purposes only; the product descriptions are not intended to delimit in any way the scope of products that are the subject of this notice. Rather, the numerical headings and subheadings of the HTS listed in the annexes govern the scope of this notice. In the instances where a 4-digit HTS heading appears in the left column

of the lists, comments are requested with respect to any of the products classified in any of the 8-digit subheadings appearing in the HTS indented under those 4-digit headings.

To be assured of consideration, written comments should be submitted by 5 p.m. on December 8, 2008.

To submit comments via *http://www.regulations.gov,* enter docket number USTR–2008–0036 on the home page and click ''go''. The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting ''Notice'' under ''Document Type'' on the left side of the search-results page, and click on the link entitled ''Send a Comment or Submission.'' (For further information on using the *http://www.regulations.gov* Web site, please consult the resources provided on the Web site by clicking on ''How to Use This Site'' on the left side of the home page.)

The *http://www.regulations.gov* site provides the option of providing comments by filling in a ''General Comments'' field, or by attaching a document. Given the detailed nature of the comments sought by the section 301 Committee, it is expected that most comments will be provided in an attached document. If a document is attached, it is sufficient to type ''See attached'' in the ''General Comments'' field.

Submissions must include on the first page a clear reference in bold and/or underlining to the HTS number(s) and product(s) which are the subject of the submission. Submissions must state clearly the position taken and describe with specificity the supporting rationale and must be written in English.

Comments will be placed in the docket and open to public inspection pursuant to 15 CFR 2006.13, except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15 or information determined by USTR to be confidential in accordance with 19 U.S.C. 2155(g)(2). Comments may be viewed on the *http://www.regulations.gov* Web site by entering docket number USTR–2008–0036 in the search field on the home page.

Persons wishing to submit business confidential information must certify in writing that such information is confidential in accordance with 15 CFR 2006.15(b), and such information must be clearly marked ''BUSINESS CONFIDENTIAL'' at the top and bottom of the cover page and each succeeding page. Any comment containing business confidential information must be accompanied by a non-confidential summary of the confidential information. The non-confidential summary will be placed in the docket and open to public inspection.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must clearly so designate the information or advice;

(2) Must clearly mark the material as ''SUBMITTED IN CONFIDENCE'' at the top and bottom of the cover page and each succeeding page; and

(3) Must provide a non-confidential summary of the information or advice.

The non-confidential summary will be placed in the docket and open to public inspection.

William L. Busis,

Chair, Section 301 Committee.

BILLING CODE 3190–W9–P

ANNEX I

EC-Beef Hormones - List of Products Currently Subject to Increased Duties

The products listed below are currently subject to 100 percent *ad valorem* duties in accordance with the WTO DSB authorization in the *EC-Beef Hormones* dispute. Each of the products listed below is under consideration for continued inclusion on a revised product list, and for the imposition of duties above the current 100 percent *ad valorem* rate. In particular, increased tariffs may continue to be applied to, or may be raised with respect to, articles that are (i) classified in the numerical headings and subheadings of the Harmonized Tariff Schedule of the United States (HTS) listed below and (ii) products of one or more of the indicated member States of the European Communities. In the instances where a 4-digit HTS heading appears in the left column of this list, products classified in any of the 8-digit subheadings appearing in the HTS under those 4-digit headings are currently subject to increased duties. In all cases, the tariff nomenclatures in the HTS for the headings and subheadings listed below are definitive; the product descriptions in this list are for **information purposes only**. The descriptions below are not intended to delimit in any way the scope of the products that would be subject to increased duties.

Products of Austria, Belgium, Denmark, Finland, France, the Federal Republic of Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, or Sweden:

HTS	Description
0201	Meat of bovine animals, fresh or chilled
0202	Meat of bovine animals, frozen
02031100	Pork carcasses and half-carcasses, fresh or chilled
02031210	Pork hams and shoulders and cuts thereof, fresh or chilled, with bone in, processed
02031290	Pork hams and shoulders and cuts thereof, fresh or chilled, with bone in, not processed
02031920	Meat of swine (pork), fresh or chilled, other, processed
02031940	Meat of swine (pork), fresh or chilled, other
02032100	Pork carcasses and half-carcasses, frozen
02032210	Pork hams and shoulders and cuts thereof, frozen, with bone in, processed
02032290	Pork hams and shoulders and cuts thereof, frozen, with bone in, not processed
02061000	Bovine tongues, fresh or chilled
02062100	Bovine tongues, frozen
02062200	Bovine livers, frozen
02062900	Edible offal of bovine animals, frozen, other than tongues or livers
04064020	Roquefort cheese in original loaves

04064040	Roquefort cheese, other than in original loaves, not grated or powdered, not processed
07031040	Onions, other than onion sets or pearl onions not over 16 mm in diameter, and shallots, fresh or chilled
07095910	Truffles, fresh or chilled
07129010	Dried carrots, whole, cut, sliced, broken or in powder, but not further prepared
16022020	Prepared or preserved liver of goose
16022040	Prepared or preserved liver of any animal other than of goose
19054000	Rusks, toasted bread and similar toasted products
20098060	Juice of any single fruit, (including cherries and berries), concentrated or not concentrated, other than citrus, pineapple, tomato, grape, apple, pear, or prune juices
21013000	Roasted chicory and other roasted coffee substitutes and extracts, essences and concentrates thereof
21033040	Prepared mustard

Products of France, the Federal Republic of Germany, or Italy:

20021000	Tomatoes, whole or in pieces, prepared or preserved otherwise than by vinegar or acetic acid

Products of France or the Federal Republic of Germany:

05040000	Guts, bladders and stomachs of animals (other than fish), whole and pieces thereof, fresh, chilled, frozen, salted, in brine, dried or smoked.
21041000	Soups and broths and preparations therefor
55101100	Yarn (other than sewing thread) containing 85% or more by weight of artificial staple fibers, singles, not put up for retail sale

Products of France:

02101100	Hams, shoulders and cuts thereof with bone in, salted, in brine, dried or smoked
15050090	Fatty substances derived from wool grease (including lanolin)
18063100	Chocolate and other cocoa preparations, in blocks, slabs or bars, filled, weighing not more than 2 kg
20079905	Lingonberry and raspberry jams obtained by cooking
35061050	Products suitable for use as glues or adhesives, put up for retail sale, not exceeding 1 kg, including fish glue, but not other animal glue

ANNEX II

EC-Beef Hormones - List of Products under Consideration for the Imposition of Increased Duties

The product list below **includes** the products, listed in Annex I, which are currently subject to increased duties in accordance with the WTO DSB authorization in the *EC-Beef Hormones* dispute. All of the remaining products listed below are under consideration for the new imposition of increased duties. In particular, increased tariffs may be applied to articles that are (i) classified in the numerical headings and subheadings of the Harmonized Tariff Schedule of the United States (HTS) listed below and (ii) products of one or more of the member States of European Communities. In the instances where a 4-digit HTS heading appears in the left column of this list, products classified in any of the 8-digit subheadings appearing in the HTS under those 4-digit headings may be subject to increased duties. In all cases, the tariff nomenclatures in the HTS for the headings and subheadings listed below are definitive; the product descriptions in this list are for **information purposes only**. The descriptions below are not intended to delimit in any way the scope of the products that would be subject to increased duties.

HTS	Description
0201	Meat of bovine animals, fresh or chilled
0202	Meat of bovine animals, frozen
0203	Meat of swine (pork), fresh, chilled or frozen
0206	Edible offal of bovine animals, swine, sheep, goats, horses, or mules, fresh, chilled or frozen
0207	Meat and edible offal of poultry (chickens, ducks, geese, turkeys and guineas), fresh, chilled or frozen
02101100	Hams, shoulders and cuts thereof with bone in, salted, in brine, dried or smoked
02101200	Bellies (streaky) and cuts thereof of swine, salted, in brine, dried or smoked
02102000	Meat of bovine animals, salted, in brine, dried or smoked
02109920	Meat and edible offal of poultry (chickens, ducks, geese, turkeys and guineas), salted, in brine, dried or smoked; flour and meal of these animals
02109990	Meat and edible offal nesoi, salted, in brine, dried or smoked; flour and meal thereof
04064020	Roquefort cheese in original loaves
04064040	Roquefort cheese, other than in original loaves, not grated or powdered, not processed
05040000	Guts, bladders and stomachs of animals (other than fish), whole and pieces thereof, fresh, chilled, frozen, salted, in brine, dried or smoked
06039000	Cut flowers and flower buds, suitable for bouquets or ornamental purposes, dried, dyed, bleached, impregnated or otherwise prepared
06049100	Foliage, branches and other parts of plants without flowers or flower buds, and grasses, suitable for bouquets or ornamental purposes, fresh
06049930	Foliage, branches, parts of plants without flowers or buds, and grasses, suitable for bouquets or ornamental purposes, dried or bleached

HTS	Description
07020020	Tomatoes, fresh or chilled, entered during March 1 to July 14, inclusive, or during September 1 to November 14, inclusive, in any year
07020040	Tomatoes, fresh or chilled, entered from July 15 through August 31 in any year
07020060	Tomatoes, fresh or chilled, entered from November 15 to the last day of February, inclusive, of the following year
07031040	Onions, other than onion sets or pearl onions not over 16 mm in diameter, and shallots, fresh or chilled
07095910	Truffles, fresh or chilled
07129010	Dried carrots, whole, cut, sliced, broken or in powder, but not further prepared
07129074	Dried tomatoes, in powder
07129078	Dried tomatoes, whole, cut, sliced or broken, but not further prepared
08024000	Chestnuts, fresh or dried, whether or not shelled or peeled
09042020	Paprika, dried or crushed or ground
10040000	Oats
11041200	Rolled or flaked grains of oats
11042200	Grains of oats, hulled, pearled, clipped, sliced, kibbled or otherwise worked, but not rolled or flaked
15050090	Fatty substances derived from wool grease (including lanolin)
1601	Sausages and similar products, of meat, meat offal or blood; food preparations based on these products
16021000	Homogenized preparations of meat, meat offal or blood, other than sausages and similar products
16022020	Prepared or preserved liver of goose
16022040	Prepared or preserved liver of any animal other than of goose
16023100	Prepared or preserved meat or meat offal of turkeys, other than sausages and similar products
16023200	Prepared or preserved meat or meat offal of chickens, other than sausages and similar products
16023900	Prepared or preserved meat or meat offal of ducks, geese or guineas, other than sausages and similar products
16024110	Prepared or preserved pork ham and cuts thereof, containing cereals or vegetables
16024120	Pork hams and cuts thereof, not containing cereals or vegetables, boned and cooked and packed in airtight containers
16024190	Prepared or preserved pork hams and cuts thereof, not containing cereals or vegetables, other than boned and cooked and packed in airtight containers
16024220	Pork shoulders and cuts thereof, boned and cooked and packed in airtight containers
16024240	Prepared or preserved pork shoulders and cuts thereof, other than boned and cooked and packed in airtight containers
16024910	Prepared or preserved pork offal, including mixtures

HTS	Description
16024920	Pork other than hams, shoulders or cuts thereof, not containing cereals or vegetables, boned and cooked and packed in airtight containers
16024940	Prepared or preserved pork, not containing cereals or vegetables, nesoi
16024960	Prepared or preserved pork mixed with beef
16024990	Prepared or preserved pork, nesoi
16025005	Prepared or preserved offal of bovine animals
16025009	Prepared or preserved meat of bovine animals, cured or pickled, not containing cereals or vegetables
16025010	Corned beef in airtight containers
16025020	Prepared or preserved beef in airtight containers, other than corned beef, not containing cereals or vegetables, not cured or pickled
16025060	Prepared or preserved meat of bovine animals, not containing cereals or vegetables, not in airtight containers
16025090	Prepared or preserved meat of bovine animals, containing cereals or vegetables
17041000	Chewing gum, whether or not sugar-coated
17049025	Sugar confectionary cough drops
18063100	Chocolate and other cocoa preparations, in blocks, slabs or bars, filled, weighing not more than 2 kg
19054000	Rusks, toasted bread and similar toasted products
20021000	Tomatoes, whole or in pieces, prepared or preserved otherwise than by vinegar or acetic acid
20029040	Tomatoes, in powder
20029080	Tomatoes, other than whole or in pieces and other than in powder (including paste and puree), prepared or preserved otherwise than by vinegar or acetic acid
20079905	Lingonberry and raspberry jams obtained by cooking
20083042	Satsumas, prepared or preserved, in airtight containers, aggregate quantity not over 40,000 metric tons/calendar year
20083046	Satsumas, prepared or preserved, in airtight containers, aggregate quantity over 40,000 metric tons/calendar year
20084000	Pears, otherwise prepared or preserved, nesoi
20087020	Peaches (excluding nectarines), otherwise prepared or preserved, nesoi
20096100	Grape juice (including grape must), of a Brix value not exceeding 30
20096900	Grape juice (including grape must), of a Brix value exceeding 30
20098060	Juice of any single fruit, (including cherries and berries), concentrated or not concentrated, other than citrus, pineapple, tomato, grape, apple, pear or prune juices
20099040	Mixtures of fruit juices, or mixtures of vegetable and fruit juices
21013000	Roasted chicory and other roasted coffee substitutes and extracts, essences and concentrates thereof

HTS	Description
21033040	Prepared mustard
21041000	Soups and broths and preparations therefor
22011000	Mineral waters and aerated waters, not containing added sugar or other sweetening matter nor flavored
23099010	Mixed feed or mixed feed ingredients of a kind used in animal feeding
35061050	Products suitable for use as glues or adhesives, put up for retail sale, not exceeding 1 kg, including fish glue but not other animal glue
55041000	Viscose rayon staple fibers, not carded, combed or otherwise processed for spinning
55101100	Single yarn (other than sewing thread) containing 85% or more by weight of artificial staple fibers, not put up for retail sale
85102010	Hair clippers, with self-contained electric motor, to be used for agricultural or horticultural purposes
85102090	Hair clippers, with self-contained electric motor, other than those to be used for agricultural or horticultural purposes
87112000	Motorcycles (incl. mopeds) and cycles, fitted with reciprocating internal-combustion piston engine with cylinder capacity of over 50 cc but not over 250 cc
87113000	Motorcycles (incl. mopeds) and cycles, fitted with reciprocating internal-combustion piston engine with cylinder capacity of over 250 cc but not over 500 cc

[FR Doc. E8–26545 Filed 11–5–08; 8:45 am]
BILLING CODE 3190–W9–C

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2009–6 and CP2009–7; Order No. 125]

Express Mail & Priority Mail Contract

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to add Express Mail & Priority Mail Contract 1 to the Competitive Product List. The Postal Service has also filed a related contract. This notice addresses procedural steps associated with these filings.

DATES: Comments are due November 10, 2008.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820 and *stephen.sharfman@prc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

On October 27, 2008, the Postal Service filed a formal request pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.* to add Express Mail & Priority Mail Contract 1 to the Competitive Product List.[1] The Postal Service asserts that the Express Mail & Priority Mail Contract 1 product is a competitive product "not of general applicability" within the meaning of 39 U.S.C. 3632(b)(3). *Id.* at 1. The Request has been assigned Docket No. MC2009–6.

The Postal Service contemporaneously filed a contract related to the proposed new product pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. The contract has been assigned Docket No. CP2009–7. The Postal Service represents that the contract fits within the proposed Mail Classification Schedule (MCS) language.

Request. The Request incorporates (1) a redacted version of the Governors' Decision authorizing the new product; (2) a redacted version of the contract; (3) requested changes in the MCS product list; (4) a statement of supporting justification as required by 39 CFR 3020.32; and (5) certification of compliance with 39 U.S.C. 3633(a).[2] Substantively, the Request seeks to add Express Mail & Priority Mail Contract 1 to the Competitive Product List. *Id.* at 1–2.

In the statement of supporting justification, Kim Parks, Sales and Communications, Expedited Shipping, asserts that the service to be provided under the contract will cover its attributable costs, make a positive contribution to institutional costs, and increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. *Id.,* Attachment D. Thus, Ms. Parks contends there will be no issue of subsidization of competitive products by market dominant products as a result of this contract. *Id.*

Related contract. A redacted version of the specific Express Mail & Priority Mail Contract 1 is included with the Request. The contract is for 3 years and is to be effective 1 day after the Commission provides all necessary regulatory approvals. The Postal Service represents that the contract is consistent with 39 U.S.C. 3633(a) and 39 CFR 3015.7(c). *See id.,* Attachment A and Attachment E. It notes that actual performance under this contract could

[1] Request of the United States Postal Service to Add Express Mail & Priority Mail Contract 1 to Competitive Product List and Notice of Establishment of Rates and Class Not of General Applicability, October 27, 2008 (Request).

[2] Attachment A to the Request consists of the redacted Decision of the Governors of the United States Postal Service on Establishment of Rate and Class Not of General Applicability for Priority Mail & Express Mail Services (Governors' Decision No. 08–17). The Governors' Decision includes an attachment which provides an analysis of the proposed Express Mail & Priority Mail Contract 1. Attachment B is the redacted version of the contract. Attachment C shows the requested changes to the MCS product list. Attachment D provides a statement of supporting justification for this Request. Attachment E provides the certification of compliance with 39 U.S.C. 3633(a).

vary from estimates, but concludes that the contract will remain profitable. *Id.,* Attachment A.

The Postal Service filed much of the supporting materials, including the Governors' Decision and the specific Express Mail & Priority Mail Contract 1, under seal. In its Request, the Postal Service maintains that the contract and related financial information, including the customer's name and the accompanying analyses that provide prices, terms, conditions, and financial projections should remain under seal. *Id.* at 2–3.

II. Notice of Filings

The Commission establishes Docket Nos. MC2009–6 and CP2009–7 for consideration of the Request pertaining to the proposed Express Mail & Priority Mail Contract 1 product and the related contract, respectively. In keeping with practice, these dockets are addressed on a consolidated basis for purposes of this order; however, future filings should be made in the specific docket in which issues being addressed pertain.[3]

Interested persons may submit comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642 and 39 CFR part 3015 and 39 CFR 3020 subpart B. Comments are due no later than November 10, 2008. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Michael J. Ravnitzky to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is Ordered:

1. The Commission establishes Docket Nos. MC2009–6 and CP2009–7 for consideration of the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Michael J. Ravnitzky is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

3. Comments by interested persons in these proceedings are due no later than November 10, 2008.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Steven W. Williams,

Secretary.

[FR Doc. E8–26520 Filed 11–5–08; 8:45 am]

BILLING CODE 7710–FW–P

[3] Docket No. MC2009–6 is reserved for those filings related to the proposed product and the requirements of § 3642, while Docket No. CP2009–7 is reserved for those filings specific to the contract and the requirements of § 3633.

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2009–4 and CP2009–5; Order No. 123]

Priority Mail Contract

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to add Priority Mail Contract 3 to the Competitive Product List. The Postal Service has also filed a related contract. This notice addresses procedural steps associated with these filings.

DATES: Comments are due November 7, 2008.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.*

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820 and *stephen.sharfman@prc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

On October 27, 2008, the Postal Service filed a formal request pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.* to add Priority Mail Contract 3 to the Competitive Product List.[1] The Postal Service asserts that the Priority Mail Contract 3 is a competitive product ''not of general applicability'' within the meaning of 39 U.S.C. 3632(b)(3). *Id.* at 1. The Request has been assigned Docket No. MC2009–4.

The Postal Service contemporaneously filed a contract related to the proposed new product pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. The contract has been assigned Docket No. CP2009–5. The Postal Service represents that the contract fits within the proposed Mail Classification Schedule (MCS) language.

Request. The Request incorporates (1) a redacted version of the Governors' Decision authorizing the new product and a certification of the Governors' vote; (2) a redacted version of the contract; (3) requested changes in the MCS product list; (4) a statement of supporting justification as required by 39 CFR 3020.32; and (5) certification of compliance with 39 U.S.C. 3633(a).[2] Substantively, the Request seeks to add Priority Mail Contract 3 to the Competitive Product List. *Id.* at 1–2.

In the statement of supporting justification, Kim Parks, Manager, Sales and Communications, Expedited Shipping, asserts that the service to be provided under the contract will cover its attributable costs, make a positive contribution to institutional costs, and increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. *Id.,* Attachment D. Thus, Parks contends there will be no issue of subsidization of competitive products by market dominant products as a result of this contract. *Id.*

Related contract. A redacted version of the specific Priority Mail Contract 3 is included with the Request. The contract is for 1 year and is to be effective 1 day after the Commission provides all necessary regulatory approvals. The Postal Service represents that the contract is consistent with 39 U.S.C. 3633(a) and 39 CFR 3015.7(c). *See id.,* Attachment A and Attachment D. It notes that the expected cost coverage may be impacted if pieces become less dense or travel a longer distance than expected. The Postal Service concludes, however, that the risks are manageable, and the contract is expected to remain profitable. *Id.,* Attachment A.

The Postal Service filed much of the supporting materials, including the Governors' Decision and the specific Priority Mail Contract 3, under seal. In its Request, the Postal Service maintains that the contract and related financial information, including the customer's name and the accompanying analyses that provide the prices, terms, conditions, and financial projections should remain under seal. *Id.* at 2.

II. Notice of Filings

The Commission establishes Docket Nos. MC2009–4 and CP2009–5 for consideration of the Request pertaining to the Priority Mail Contract 3 product and the related contract, respectively. In

[1] Request of the United States Postal Service to Add Priority Mail Contract 3 to Competitive Product List and Notice of Establishment of Rates and Class Not of General Applicability, October 27, 2008 (Request).

[2] Attachment A to the Request consists of the redacted Decision of the Governors of the United States Postal Service on Establishment of Rate and Class Not of General Applicability for Priority Mail Service (Governors' Decision No. 08–15). The Governors' Decision includes an attachment which is an analysis of the proposed Priority Mail Contract 3. Attachment B is the redacted version of the contract. Attachment C shows the requested changes in the MCS product list. Attachment D provides a statement of supporting justification for this Request. Attachment E provides the certification of compliance with 39 U.S.C. 3633(a).

keeping with practice, these dockets are addressed on a consolidated basis for purposes of this order; however, future filings should be made in the specific docket in which issues being addressed pertain.[3]

Interested persons may submit comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642 and 39 CFR part 3015 and 39 CFR 3020 subpart B. Comments are due no later than November 7, 2008. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Paul L. Harrington to serve as Public Representative in the captioned filings.

III. Ordering Paragraphs

It is Ordered:

1. The Commission establishes Docket Nos. MC2009–4 and CP2009–5 for consideration of the matters raised in each respective docket.
2. Pursuant to 39 U.S.C. 505, Paul L. Harrington is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.
3. Comments by interested persons in these proceedings are due no later than November 7, 2008.
4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Steven W. Williams,

Secretary.

[FR Doc. E8–26514 Filed 11–5–08; 8:45 am]

BILLING CODE 7710–FW–P

[3] Docket No. MC2009–4 is reserved for those filings related to the proposed product and the requirements of § 3642, while Docket No. CP2009–5 is reserved for those filings specific to the contract and the requirements of § 3633.

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2009–2 and CP2009–3; Order No. 122]

Priority Mail Contract

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to add Priority Mail Contract 2 to the Competitive Product List. The Postal Service has also filed a related contract. This notice addresses procedural steps associated with these filings.

DATES: Comments are due November 6, 2008.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.*

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820 and *stephen.sharfman@prc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

On October 24, 2008, the Postal Service filed a formal request pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.* to add Priority Mail Contract 2 to the Competitive Product List.[1] The Postal Service asserts that the Priority Mail Contract 2 product is a competitive product ''not of general applicability'' within the meaning of 39 U.S.C. 3632(b)(3). *Id.* at 1. The Request has been assigned Docket No. MC2009–2.

The Postal Service contemporaneously filed a contract related to the proposed new product pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. The contract has been assigned Docket No. CP2009–3. The Postal Service represents that the contract fits within the proposed Mail Classification Schedule (MCS) language.

Request. The Request incorporates (1) A redacted version of the Governors' Decision authorizing the new product; (2) a redacted version of the contract; (3) requested changes in the MCS product list; (4) a statement of supporting justification as required by 39 CFR 3020.32; and (5) certification of compliance with 39 U.S.C. 3633(a).[2] Substantively, the Request seeks to add Priority Mail Contract 2 to the Competitive Product List. *Id.* at 1–2.

In the statement of supporting justification, Kim Parks, Manager, Sales and Communications, Expedited Shipping, asserts that the service to be provided under the contract will cover its attributable costs, make a positive contribution to institutional costs, and increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. *Id.*, Attachment D. Thus, Ms. Parks contends there will be no issue of subsidization of competitive products by market dominant products as a result of this contract. *Id.*

Related contract. A redacted version of the specific Priority Mail Contract 2 is included with the Request. The contract is for 1 year and is to be effective 1 day after the Commission approves the required addition of this product to the product list unless that date is later than November 10, 2008; then the effective date is deferred until January 1, 2009.[3] The Postal Service represents that the contract is consistent with 39 U.S.C. 3633(a) and 39 CFR 3015.7(c). *See id.*, Attachment A and Attachment D. It notes that there is some risk of not meeting the expected cost coverage; for instance, if the pieces become less dense, or if a greater number of pieces travel a longer distance than expected but concludes that the risks are manageable and the contract will remain profitable. *Id.*, Attachment A.

The Postal Service filed much of the supporting materials, including the Governors' Decision and the specific Priority Mail Contract 2, under seal. In its Request, the Postal Service maintains that the contract and related financial information, including the customer's name and the accompanying analyses that provide the prices, terms, conditions, and financial projections, should remain under seal. *Id.* at 2.

II. Notice of Filings

The Commission establishes Docket Nos. MC2009–2 and CP2009–3 for consideration of the Request pertaining to the Priority Mail Contract 2 product and the related contract, respectively. In keeping with practice, these dockets are addressed on a consolidated basis for purposes of this order; however, future filings should be made in the specific docket in which issues being addressed pertain.[4]

Interested persons may submit comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642 and 39 CFR part 3015 and 39 CFR 3020 subpart B. The Postal Service expresses the hope that the Commission can complete its

[1] Request of the United States Postal Service to Add Priority Mail Contract 2 to Competitive Product List and Notice of Establishment of Rates and Class Not of General Applicability, October 24, 2008 (Request).

[2] Attachment A to the Request consists of the redacted Decision of the Governors of the United States Postal Service on Establishment of Rate and Class Not of General Applicability for Priority Mail Contract 2 (Governors' Decision No. 08–13). The Governors' Decision includes an attachment which provides an analysis of the proposed Priority Mail Contract 2. Attachment B is a redacted version of the contract. Attachment C shows the requested changes in the MCS product list. Attachment D provides a statement of supporting justification for this Request. Attachment E provides the certification of compliance with 39 U.S.C. 3633(a).

[3] Errata to Request of the United States Postal Service to Add Priority Mail Contract 2 to Competitive Product List and Notice of Establishment of Rates and Class Not of General Applicability, October 27, 2008 (Errata).

[4] Docket No. MC2009–2 is reserved for those filings related to the proposed product and the requirements of § 3642, while Docket No. CP2009–3 is reserved for those filings specific to the contract and the requirements of § 3633.

review and issue an order approving Priority Mail Contract 2 no later than November 10, 2008.[5] Recognizing that these filings have been available on the Commission's Web site since October 24, 2008 and in light of the Postal Service's Request, comments are due no later than November 6, 2008. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Paul L. Harrington to serve as Public Representative in the captioned filings.

III. Ordering Paragraphs

It is Ordered:

1. The Commission establishes Docket Nos. MC2009–2 and CP2009–3 for consideration of the matters raised in each respective docket.
2. Pursuant to 39 U.S.C. 505, Paul L. Harrington is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.
3. Comments by interested persons in these proceedings are due no later than November 6, 2008.
4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Steven W. Williams,

Secretary.

[FR Doc. E8–26517 Filed 11–5–08; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2009–5 and CP2009–6; Order No. 124]

Priority Mail Contract

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to add Priority Mail Contract 4 to the Competitive Product List. The Postal Service has also filed a related contract. This notice addresses procedural steps associated with these filings.

DATES: Comments are due November 7, 2008.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820 and *stephen.sharfman@prc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

On October 27, 2008, the Postal Service filed a formal request pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.* to add the Priority Mail Contract 4 product to the Competitive Product List. The Postal Service asserts that the Priority Mail Contract 4 product is a competitive product ''not of general applicability'' within the meaning of 39 U.S.C. 3632(b)(3). This Request has been assigned Docket No. MC2009–5.[1]

The Postal Service contemporaneously filed a contract related to the proposed new product pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. The contract is assigned Docket No. CP2009–6. The Postal Service represents that the contract fits within the proposed Mail Classification Schedule (MCS) language.

Request. The Request is filed pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.* The Request incorporates (1) A redacted version of the Governors' Decision authorizing the new product; (2) a redacted version of the contract; (3) requested changes in the MCS product list; (4) submission of supporting material under seal; and (5) certification of compliance with 39 U.S.C. 3633(a).[2] The Request seeks to add Priority Mail Contract 4 to the Competitive Product List. Request at 1.

In the statement of supporting justification, Kim Parks, Manager, Sales and Communications, Expedited Shipping, asserts that the service to be provided under the contract will cover its attributable costs, make a positive contribution to institutional costs, and increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. *Id.,* Attachment D. Thus, Ms. Parks contends there will be no issue of subsidization of competitive products by market dominant products as a result of this contract. *Id.*

Related contract. A redacted version of the specific Priority Mail Contract 4 is included with the Request. The contract is for 2 years and is to be effective 1 day after the Commission approves the required addition of this product to the product list. The Postal Service represents that the contract is consistent with 39 U.S.C. 3633(a) and 39 CFR 3015.7 (c). *See id.,* Attachment A and Attachment D. It notes that there is some risk of not meeting the expected cost coverage, based, for example, on pieces becoming less dense or traveling a longer distance than expected. The Postal Service concludes, however, that the risks are manageable and expects the contract to remain profitable. *Id.,* Attachment A.

The Postal Service filed much of the supporting materials, including the Governors' Decision and the specific Priority Mail Contract 4 under seal. In its Request, the Postal Service maintains that the contract and related financial information, including the customer's name and the accompanying analyses that provide the prices, terms, conditions, and financial projections should remain under seal. *Id.* at 2.

II. Notice of Filings

The Commission establishes Docket Nos. MC2009–5 and CP2009–6 for consideration of the Request pertaining to the Priority Mail Contract 4 product and the related contract. In keeping with practice, these dockets are addressed on a consolidated basis for purposes of this order; however, future filings should be made in the specific docket in which issues being addressed pertain.

Interested persons may submit comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642. Comments are due no later than November 7, 2008. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Paul L. Harrington to serve as Public Representative in the captioned filings.

III. Ordering Paragraphs

It is Ordered:

1. The Commission establishes Docket Nos. MC2009–5 and CP2009–6 for consideration of the matters raised in each docket.
2. The Commission, pursuant to 39 U.S.C. 505, appoints Paul L. Harrington

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[5] Errata at 1. The Commission appreciates the time pressures confronting the Postal Service regarding these types of agreements. Within the bounds of due process, the Commission endeavors to act expeditiously on the Postal Service's Requests. The Commission observes that the Postal Service has the responsibility to provide the Commission sufficient time to perform its review and analysis with due diligence.

[1] Request of the United States Postal Service to Add Priority Mail Contract 4 to Competitive Product List and Notice of Establishment of Rates and Class Not of General Applicability, October 27, 2008 (Request).

[2] Attachment A to the Request consists of the redacted Decision of the Governors of the United States Postal Service on Establishment of Rates and Class Not of General Applicability for Priority Mail Service (Governors' Decision No. 08–16). The Governors' Decision includes an attachment which provides an analysis of the proposed Priority Mail Service Contract. Attachment B is a redacted version of the contract. Attachment C shows the requested changes in the MCS product list. Attachment D provides a statement of supporting justification for this Request. Attachment E provides the certification of compliance with 39 U.S.C. 3633(a).

to serve as officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

3. Comments by interested persons in these proceedings are due no later than November 7, 2008.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Steven W. Williams,

Secretary.

[FR Doc. E8–26518 Filed 11–5–08; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIME: Wednesday, November 12, 2008, at 12:30 p.m.; and Thursday, November 13, 2008, at 8:30 a.m. and 11a.m.

PLACE: Washington, DC, at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., in the Benjamin Franklin Room.

STATUS: November 12—12:30 p.m.—Closed; November 13—8:30 a.m.—Open; November 13—11 a.m.—Closed.

MATTERS TO BE CONSIDERED:

Wednesday, November 12 at 12:30 p.m. (Closed)

1. Strategic Issues.
2. Financial Matters.
3. Pricing.
4. Personnel Matters and Compensation Issues.
5. Governors' Executive Session—Discussion of prior agenda items and Board Governance.

Thursday, November 13 at 8:30 a.m. (Open)

1. Minutes of the Previous Meetings, September 23–24, and October 20–21, 2008.
2. Remarks of the Chairman of the Board.
3. Remarks of the Postmaster General and CEO.
4. Committee Reports.
5. Quarterly Report on Service Performance.
6. Consideration of Fiscal Year 2008 Audited Financial Statements and Postal Service Annual Report.
7. Tentative Agenda for the December 2–3, 2008, meeting in Washington, DC.

Thursday, November 13 at 11 a.m. (Closed)—If Needed

1. Continuation of Wednesday's closed session agenda.

FOR FURTHER INFORMATION CONTACT: Julie S. Moore, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–1000. Telephone (202) 268–4800.

Julie S. Moore,

Secretary.

[FR Doc. E8–26555 Filed 11–4–08; 11:15 am]

BILLING CODE 7710–12–P

RAILROAD RETIREMENT BOARD

2009 Railroad Experience Rating Proclamations, Monthly Compensation Base and Other Determinations

AGENCY: Railroad Retirement Board.

ACTION: Notice.

SUMMARY: Pursuant to section 8(c)(2) and section 12(r)(3) of the Railroad Unemployment Insurance Act (Act) (45 U.S.C. 358(c)(2) and 45 U.S.C. 362(r)(3), respectively), the Board gives notice of the following:

1. The balance to the credit of the Railroad Unemployment Insurance (RUI) Account, as of June 30, 2008, is $122,524,603.90;
2. The September 30, 2008, balance of any new loans to the RUI Account, including accrued interest, is zero;
3. The system compensation base is $3,596,278,039.12 as of June 30, 2008;
4. The cumulative system unallocated charge balance is ($305,933,872.49) as of June 30, 2008;
5. The pooled credit ratio for calendar year 2009 is zero;
6. The pooled charged ratio for calendar year 2009 is zero;
7. The surcharge rate for calendar year 2009 is 1.5 percent;
8. The monthly compensation base under section 1(i) of the Act is $1,330 for months in calendar year 2009;
9. The amount described in sections 1(k) and 3 of the Act as ''2.5 times the monthly compensation base'' is $3,325 for base year (calendar year) 2009;
10. The amount described in section 4(a–2)(i)(A) of the Act as ''2.5 times the monthly compensation base'' is $3,325 with respect to disqualifications ending in calendar year 2009;
11. The amount described in section 2(c) of the Act as ''an amount that bears the same ratio to $775 as the monthly compensation base for that year as computed under section 1(i) of this Act bears to $600'' is $1,718 for months in calendar year 2009;
12. The maximum daily benefit rate under section 2(a)(3) of the Act is $64 with respect to days of unemployment and days of sickness in registration periods beginning after June 30, 2009.

DATES: The balance in notice (1) and the determinations made in notices (3) through (7) are based on data as of June 30, 2008. The balance in notice (2) is based on data as of September 30, 2008. The determinations made in notices (5) through (7) apply to the calculation, under section 8(a)(1)(C) of the Act, of employer contribution rates for 2009. The determinations made in notices (8) through (12) are effective January 1, 2009. The determination made in notice (13) is effective for registration periods beginning after June 30, 2009.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611–2092.

FOR FURTHER INFORMATION CONTACT: Marla L. Huddleston, Bureau of the Actuary, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611–2092, telephone (312) 751–4779.

SUPPLEMENTARY INFORMATION: The RRB is required by section 8(c)(1) of the Railroad Unemployment Insurance Act (Act) (45 U.S.C. 358(c)(1)) as amended by Public Law 100–647, to proclaim by October 15 of each year certain system-wide factors used in calculating experience-based employer contribution rates for the following year. The RRB is further required by section 8(c)(2) of the Act (45 U.S.C. 358(c)(2)) to publish the amounts so determined and proclaimed. The RRB is required by section 12(r)(3) of the Act (45 U.S.C. 362(r)(3)) to publish by December 11, 2008, the computation of the calendar year 2009 monthly compensation base (section 1(i) of the Act) and amounts described in sections 1(k), 2(c), 3 and 4(a–2)(i)(A) of the Act which are related to changes in the monthly compensation base. Also, the RRB is required to publish, by June 11, 2009, the maximum daily benefit rate under section 2(a)(3) of the Act for days of unemployment and days of sickness in registration periods beginning after June 30, 2009.

Surcharge Rate

A surcharge is added in the calculation of each employer's contribution rate, subject to the applicable maximum rate, for a calendar year whenever the balance to the credit of the RUI Account on the preceding June 30 is less than the greater of $100 million or the amount that bears the same ratio to $100 million as the system compensation base for that June 30 bears to the system compensation base as of June 30, 1991. If the RUI Account balance is less than $100 million (as indexed), but at least $50 million (as indexed), the surcharge will be 1.5 percent. If the RUI Account balance is less than $50 million (as indexed), but

greater than zero, the surcharge will be 2.5 percent. The maximum surcharge of 3.5 percent applies if the RUI Account balance is less than zero.

The system compensation base as of June 30, 1991 was $2,763,287,237.04. The system compensation base for June 30, 2008 was $3,596,278,039.12. The ratio of $3,596,278,039.12 to $2,763,287,237.04 is 1.30144923. Multiplying 1.30144923 by $100 million yields $130,144,923. Multiplying $50 million by 1.30144923 produces $65,072,462. The Account balance on June 30, 2008, was $122,524,603.90. Accordingly, the surcharge rate for calendar year 2009 is 1.5 percent.

Monthly Compensation Base

For years after 1988, section 1(i) of the Act contains a formula for determining the monthly compensation base. Under the prescribed formula, the monthly compensation base increases by approximately two-thirds of the cumulative growth in average national wages since 1984. The monthly compensation base for months in calendar year 2009 shall be equal to the greater of (a) $600 or (b) $600 [1 + {(A − 37,800)÷56,700}], where A equals the amount of the applicable base with respect to tier 1 taxes for 2009 under section 3231(e)(2) of the Internal Revenue Code of 1986. Section 1(i) further provides that if the amount so determined is not a multiple of $5, it shall be rounded to the nearest multiple of $5.

The calendar year 2009 tier 1 tax base is $106,800. Subtracting $37,800 from $106,800 produces $69,000. Dividing $69,000 by $56,700 yields a ratio of 1.21693122. Adding one gives 2.21693122. Multiplying $600 by the amount 2.21693122 produces the amount of $1,330.16, which must then be rounded to $1,330. Accordingly, the monthly compensation base is determined to be $1,330 for months in calendar year 2009.

Amounts Related to Changes in Monthly Compensation Base

For years after 1988, sections 1(k), 3, 4(a–2)(i)(A) and 2(c) of the Act contain formulas for determining amounts related to the monthly compensation base.

Under section 1(k), remuneration earned from employment covered under the Act cannot be considered subsidiary remuneration if the employee's base year compensation is less than 2.5 times the monthly compensation base for months in such base year. Under section 3, an employee shall be a ''qualified employee'' if his/her base year compensation is not less than 2.5 times the monthly compensation base for months in such base year. Under section 4(a–2)(i)(A), an employee who leaves work voluntarily without good cause is disqualified from receiving unemployment benefits until he has been paid compensation of not less than 2.5 times the monthly compensation base for months in the calendar year in which the disqualification ends.

Multiplying 2.5 by the calendar year 2009 monthly compensation base of $1,330 produces $3,325. Accordingly, the amount determined under sections 1(k), 3 and 4(a–2)(i)(A) is $3,325 for calendar year 2009.

Under section 2(c), the maximum amount of normal benefits paid for days of unemployment within a benefit year and the maximum amount of normal benefits paid for days of sickness within a benefit year shall not exceed an employee's compensation in the base year. In determining an employee's base year compensation, any money remuneration in a month not in excess of an amount that bears the same ratio to $775 as the monthly compensation base for that year bears to $600 shall be taken into account.

The calendar year 2009 monthly compensation base is $1,330. The ratio of $1,330 to $600 is 2.21666667. Multiplying 2.21666667 by $775 produces $1,718. Accordingly, the amount determined under section 2(c) is $1,718 for months in calendar year 2009.

Maximum Daily Benefit Rate

Section 2(a)(3) contains a formula for determining the maximum daily benefit rate for registration periods beginning after June 30, 1989, and after each June 30 thereafter. Legislation enacted on October 9, 1996, revised the formula for indexing maximum daily benefit rates. Under the prescribed formula, the maximum daily benefit rate increases by approximately two-thirds of the cumulative growth in average national wages since 1984. The maximum daily benefit rate for registration periods beginning after June 30, 2009, shall be equal to 5 percent of the monthly compensation base for the base year immediately preceding the beginning of the benefit year. Section 2(a)(3) further provides that if the amount so computed is not a multiple of $1, it shall be rounded down to the nearest multiple of $1.

The calendar year 2008 monthly compensation base is $1,280. Multiplying $1,280 by 0.05 yields $64.00, an even multiple of $1. Accordingly, the maximum daily benefit rate for days of unemployment and days of sickness beginning in registration periods after June 30, 2009, is determined to be $64.

Dated: October 31, 2008.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. E8–26474 Filed 11–5–08; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–28481]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

October 31, 2008.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of October, 2008. A copy of each application may be obtained for a fee at the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549–1520 (tel. 202–551–5850). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 20, 2008, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus at (202) 551–6810, SEC, Division of Investment Management, Office of Investment Company Regulation, 100 F Street, NE., Washington, DC 20549–4041.

Eaton Vance Municipal Bond Fund L.P. [File No. 811–2778]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On December 31, 1997, applicant transferred its assets to Eaton Vance Municipal Bond Fund, a series of Eaton Vance Mutual Funds Trust, based on net asset value. Expenses of $15,000 incurred in

connection with the reorganization were paid by applicant.

Filing Dates: The application was filed on August 11, 2008, and amended on September 29, 2008.

Applicant's Address: The Eaton Vance Building, 255 State St., Boston, MA 02109.

Scudder Global RREEF Real Estate Fund, Inc. [File No. 811–21550]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Dates: The application was filed on August 4, 2008, and amended on October 14, 2008.

Applicant's Address: 280 Park Ave., New York, NY 10017.

Delaware Investments Minnesota Municipal Income Fund, Inc. [File No. 811–6568]

Delaware Investments Minnesota Municipal Income Fund III, Inc. [File No. 811–7938]

Summary: Each applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On February 24, 2006, each applicant transferred its assets to Delaware Investments Minnesota Municipal Income Fund II, Inc., based on net asset value. Total expenses of approximately $396,650 incurred in connection with the reorganizations were paid by the applicants, the acquiring fund and Delaware Management Company, investment adviser to the applicants.

Filing Dates: The applications were filed on August 13, 2008, and amended on October 20, 2008.

Applicants' Address: 2005 Market St., Philadelphia, PA 19103.

Phoenix Multi-Series Trust [File No. 811–6566]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company.

On December 22, 2005, applicant liquidated one series. On June 27, 2007, applicant's two remaining series transferred their assets to corresponding series of Phoenix Opportunities Trust, based on net asset value. Expenses of approximately $152,211 incurred in connection with the reorganization were paid by the acquiring fund.

Filing Date: The application was filed on September 26, 2008.

Applicant's Address: 56 Prospect St., PO Box 150480, Hartford, CT 06115–0480.

Phoenix PHOLIOs [File No. 811–7643]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On December 22 and 27, 2006, applicant liquidated three series. On September 24, 2007, applicant's four remaining series transferred their assets to corresponding series of Phoenix Opportunities Trust, based on net asset value. Expenses of approximately $62,358 incurred in connection with the reorganization were paid by the surviving series.

Filing Date: The application was filed on September 26, 2008.

Applicant's Address: 56 Prospect St., PO Box 150480, Hartford, CT 06115–0480.

Phoenix CA Tax-Exempt Bond Fund [File No. 811–3714]

Phoenix Portfolios [File No. 811–8631]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On June 27, 2007, each applicant transferred its assets to a corresponding series of Phoenix Opportunities Trust, based on net asset value. Expenses of approximately $9,263 and $10,023, respectively, incurred in connection with the reorganizations were paid by the acquiring fund.

Filing Date: The applications were filed on September 26, 2008.

Applicants' Address: 56 Prospect St., PO Box 150480, Hartford, CT 06115–0480.

Legg Mason Partners Equity Funds [File No. 811–4551]

Legg Mason Partners Sector Series, Inc. [File No. 811–4757]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On April 16, 2007, each applicant transferred its assets to corresponding series of Legg Mason Partners Equity Trust, based on net asset value. Expenses of approximately $197,148 and $47,850, respectively, incurred in connection with the reorganizations were paid by applicants and Legg Mason, Inc., the parent company of applicants' investment adviser.

Filing Date: The applications were filed on September 26, 2008.

Applicants' Address: 55 Water St., New York, NY 10041.

Legg Mason Partners Massachusetts Municipals Fund [File No. 811–4994]

Legg Mason Partners Oregon Municipals Fund [File No. 811–7149]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On April 16, 2007, each applicant transferred its assets to a corresponding series of Legg Mason Partners Income Trust, based on net asset value. Expenses of approximately $8,190 and $6,526, respectively, incurred in connection with the reorganizations were paid by applicants and Legg Mason, Inc., parent company of applicants' investment adviser.

Filing Date: The applications were filed on September 26, 2008.

Applicants' Address: 55 Water St., New York, NY 10041.

Legg Mason Partners Investors Value Fund, Inc. [File No. 811–805]

Legg Mason Partners Equity Fund, Inc. [File No. 811–2733]

Legg Mason Partners Fundamental Value Fund, Inc. [File No. 811–3158]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On April 16, 2007, each applicant transferred its assets to a corresponding series of Legg Mason Partners Equity Trust, based on net asset value. Expenses of approximately $223,156, $235,396 and $2,749,910, respectively, incurred in connection with the reorganizations were paid by applicants and Legg Mason, Inc., the parent company of applicants' investment adviser.

Filing Date: The applications were filed on September 17, 2008.

Applicants' Address: 55 Water St., New York, NY 10041.

Legg Mason Partners Investment Series [File No. 811–5018]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 16, 2007, applicant transferred its assets to corresponding series of Legg Mason Partners Equity Trust, Legg Mason Partners Variable Equity Trust and Legg Mason Partners Variable Income Trust, based on net asset value. Expenses of approximately $2,003,049 incurred in connection with the reorganization were paid by applicant and Legg Mason, Inc., the parent company of applicant's investment adviser.

Filing Date: The application was filed on September 26, 2008.

Applicant's Address: 55 Water St., New York, NY 10041.

Legg Mason Partners Series Funds, Inc. [File No. 811–6087]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 16, 2007, applicant transferred its assets to corresponding series of Legg Mason Partners Equity Trust and Legg Mason Partners Income Trust, based on net asset value. Expenses of approximately $453,367 incurred in connection with the reorganization were paid by applicant and Legg Mason, Inc., the parent company of applicant's investment adviser.

Filing Date: The application was filed on September 26, 2008.

Applicant's Address: 55 Water St., New York, NY 10041.

Legg Mason Partners Municipal Funds [File No. 811–4395]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 16, 2007, applicant transferred its assets to corresponding series of Legg Mason Partners Income Trust and Legg Mason Partners Money Market Trust, based on net asset value. Expenses of approximately $599,641 incurred in connection with the reorganization were paid by applicant and Legg Mason, Inc., the parent company of applicant's investment adviser.

Filing Date: The application was filed on September 26, 2008.

Applicant's Address: 55 Water St., New York, NY 10041.

Legg Mason Partners Funds, Inc. [File No. 811–1464]

Legg Mason Partners Managed Municipals Fund, Inc. [File No. 811–3097]

Legg Mason Partners Core Plus Bond Fund, Inc. [File No. 811–4061]

Legg Mason Partners New Jersey Municipals Fund, Inc. [File No. 811–5406]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On April 16, 2007, each applicant transferred its assets to a corresponding series of Legg Mason Partners Income Trust, based on net asset value. Expenses of approximately $31,993, $360,606, $87,298 and $25,533, respectively, incurred in connection with the reorganizations were paid by applicants and Legg Mason, Inc., the parent company of applicants' investment adviser.

Filing Date: The applications were filed on September 17, 2008.

Applicants' Address: 55 Water St., New York, NY 10041.

The Blue Fund Group [File No. 811–21908]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 24, 2008, applicant made a final liquidating distribution to its shareholders, based on net asset value. Expenses of $29,567 incurred in connection with the liquidation were paid by Blue Investment Management, LLC, applicant's investment adviser.

Filing Date: The application was filed on September 23, 2008.

Applicant's Address: 888 16th St., NW., Suite 800, Washington, DC 20006.

Cash Equivalent Fund [File No. 811–2899]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On July 8, 2005, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $72,039 incurred in connection with the liquidation were paid by Deutsche Investment Management Americas Inc., applicant's investment adviser.

Filing Date: The application was filed on September 30, 2008.

Applicant's Address: 345 Park Ave., New York, NY 10154.

AIM Summit Investors Plans I [File No. 811–3444]

AIM Summit Investors Plans II [File No. 811–9311]

Summary: Each applicant, a unit investment trust, seeks an order declaring that it has ceased to be an investment company. On December 8, 2006, each applicant made a liquidating distribution to its unitholders, based on net asset value. Expenses of $251,861 and $76,978, respectively, incurred in connection with the liquidations were paid by Invesco Aim Distributors, Inc., applicants' distributor.

Filing Date: The applications were filed on September 26, 2008.

Applicants' Address: 11 Greenway Plaza, Suite 100, Houston, TX 77046–1173.

Oppenheimer Tremont Opportunity Fund, LLC [File No. 811–10541]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On March 31, 2008, June 30, 2008, and August 31, 2008, applicant made liquidating distributions to its shareholders, based on net asset value. Applicant incurred no expenses in connection with the liquidation.

Filing Date: The application was filed on October 3, 2008.

Applicant's Address: 6803 S. Tucson Way, Centennial, CO 80112.

Evergreen Latin America Fund [File No. 811–7914]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On or about February 27, 1998, applicant transferred its assets to a corresponding series of Evergreen International Trust, based on net asset value. Applicant paid the expenses incurred in connection with the reorganization.

Filing Date: The application was filed on October 6, 2008.

Applicant's Address: 200 Berkeley St., Boston, MA 02116.

Evergreen Limited Market Fund Inc. [File No. 811–3653]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On or about December 22, 1997, applicant transferred its assets to a corresponding series of Evergreen Equity Trust, based on net asset value. Applicant paid the expenses incurred in connection with the reorganization.

Filing Date: The application was filed on October 7, 2008.

Applicant's Address: 200 Berkeley St., Boston, MA 02116.

Evergreen Lexicon Trust [File No. 811–6368]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On or about December 22, 1997, applicant transferred its assets to a corresponding series of Evergreen Fixed Income Trust, based on net asset value. Applicant paid the expenses incurred in connection with the reorganization.

Filing Date: The application was filed on October 6, 2008.

Applicant's Address: 200 Berkeley St., Boston, MA 02116.

XTF Advisors Trust [File No. 811–21971]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 20, 2008, applicant made a liquidating distribution to its shareholders, on the basis of net assets. Expenses of $7,916 incurred in connection with the liquidation were paid by the applicant and CLS Investment Firm, LLC, applicant's investment adviser.

Filing Dates: The application was filed on August 29, 2008, and amended on September 30, 2008.

Applicant's Address: c/o Gemini Fund Services, LLC, 450 Wireless Boulevard, Hauppauge, NY 11788.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–26441 Filed 11–5–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28482; 812–13548]

Wells Fargo Funds Trust, et al.; Notice of Application

October 31, 2008.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from rule 12d1–2(a) under the Act.

Summary of Application: Applicants request an order to permit funds of funds relying on rule 12d1–2 under the Act to invest in certain financial instruments.

Applicants: Wells Fargo Funds Trust (''Trust'') and Wells Fargo Funds Management, LLC (''Advisor'').

Filing Dates: The application was filed on July 21, 2008, and amended on October 29, 2008.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 25, 2008, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicants, c/o Karin L. Brotman, Wells Fargo Funds Management, LLC, 45 Fremont Street, 26th Floor, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Lewis Reich, Senior Counsel, at (202) 551–6919, or Janet M. Grossnickle, Assistant Director, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549–1520 (telephone (202) 551–5850).

Applicants' Representations:

1. The Trust is organized as a Delaware statutory trust and is registered under the Act as an open-end series management investment company. The Advisor is registered as an investment adviser under the Investment Advisers Act of 1940, as amended, and provides investment management advice and manages the business affairs of each Applicant Fund (as defined below). Applicants request an exemption from rule 12d1–2(a) under the Act to the extent necessary to permit any existing or future series of the Trust and any other registered open-end investment company advised by the Advisor or any person controlling, controlled by or under common control with the Advisor that operates as a ''fund of funds'' (the ''Applicant Funds'') and invests in other Wells Fargo funds in reliance on section 12(d)(1)(G) of the Act, and is also eligible to invest in securities (as defined in section 2(a)(36) of the Act) in reliance on rule 12d1–2 under the Act, to also invest, to the extent consistent with its investment objective, policies, strategies and limitations, in financial instruments that may not be securities within the meaning of section 2(a)(36) of the Act (''Other Investments'').[1]

2. Consistent with its fiduciary obligations under the Act, each Applicant Fund's board of trustees or directors will review the advisory fees charged by the Applicant Fund's investment adviser to ensure that they are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to the advisory agreement of any investment company in which the Applicant Fund may invest.

Applicants' Legal Analysis:

1. Section 12(d)(1)(A) of the Act provides that no registered investment company (''acquiring company'') may acquire securities of another investment company (''acquired company'') if such securities represent more than 3% of the acquired company's outstanding voting stock or more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(G) of the Act provides that section 12(d)(1) will not apply to securities of an acquired company purchased by an acquiring company if: (i) The acquiring company and acquired company are part of the same group of investment companies; (ii) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper; (iii) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to section 22(b) or section 22(c) of the Act by a securities association registered under section 15A of the Exchange Act or by the Commission; and (iv) the acquired company has a policy that prohibits it from acquiring securities of registered open-end management investment companies or registered unit investment trusts in reliance on section 12(d)(1)(F) or (G) of the Act.

3. Rule 12d1–2 under the Act permits a registered open-end investment company or a registered unit investment trust that relies on section 12(d)(1)(G) of the Act to acquire, in addition to securities issued by another registered investment company in the same group of investment companies, government securities, and short-term paper: (1) Securities issued by an investment company that is not in the same group of investment companies, when the acquisition is in reliance on section 12(d)(1)(A) or 12(d)(1)(F) of the Act; (2) securities (other than securities issued by an investment company); and (3) securities issued by a money market fund, when the investment is in reliance on rule 12d1–1 under the Act. For the purposes of rule 12d1–2, ''securities'' means any security as defined in section 2(a)(36) of the Act.

4. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction from any provision of the Act, or from any rule under the Act, if such exemption is

[1] Every existing entity that currently intends to rely on the requested order is named as an applicant. Any existing or future entity that relies on the order in the future will do so only in accordance with the terms and condition in the application.

necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

5. Applicants state that the proposed arrangement would comply with the provisions of rule 12d1–2 under the Act, but for the fact that the Applicant Funds may invest a portion of their assets in Other Investments. Applicants request an order under section 6(c) of the Act for an exemption from rule 12d1–2(a) to allow the Applicant Funds to invest in Other Investments. Applicants assert that permitting the Applicant Funds to invest in Other Investments as described in the application would not raise any of the concerns that the requirements of section 12(d)(1) were designed to address.

Applicants' Condition:

Applicants agree that the order granting the requested relief will be subject to the following condition:

Applicants will comply with all provisions of rule 12d1–2 under the Act, except for paragraph (a)(2) to the extent that it restricts any Fund from investing in Other Investments as described in the application.

For the Commission, by the Division of Investment Management, under delegated authority.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–26488 Filed 11–5–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58887; File No. SR–CBOE–2008–111]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Temporarily Increase the Number of Additional Quarterly Option Series in Exchange-Traded Fund Options That May Be Listed

October 30, 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 29, 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.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 5.5(e), *Quarterly Option Series Pilot Program*, to temporarily increase the number of additional Quarterly Option Series (''QOS'') in exchange-traded fund (''ETF'') options from sixty (60) to one hundred (100) that may be added by the Exchange. 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

The purpose of this proposed rule change is to temporarily increase the number of additional QOS in ETF options from sixty (60) to one hundred (100) that may be added by the Exchange. To effect this change, the Exchange is proposing to add new subparagraph (7) to Rule 5.5(e).

Because of the current, unprecedented market conditions, the Exchange has received requests from market participants to add lower priced strikes for QOS in the Energy Select Sector SPDR (''XLE''), the DIAMONDS Trust, Series 1 (''DIA'') and the Standard and Poor's Depositary Receipts/SPDRs (''SPY''). For example, for December 2008 expiration, there is demand for strikes (a) ranging from $20 up through and including $40 for XLE, (b) ranging from $60 up through and including $75 for DIA, and (c) ranging from $74 up through and including $85 for SPY. These strikes are much lower than those currently listed for which there is open interest.

However, under current Rule 5.5(e)(4), the Exchange cannot honor these requests because the maximum number of additional series, sixty (60), has already been listed. The Exchange is therefore seeking to temporarily increase the number of additional QOS that may be added to one hundred (100). The increase of additional series would be permitted immediately for expiration months currently listed and for expiration months added throughout the last quarter of 2008, including the new expiration month added after December 2008 expiration. The Exchange believes that this proposal is reasonable and will allow for more efficient risk management. The Exchange believes this proposal will facilitate the functioning of the Exchange's market and will not harm investors or the public interest.

The Exchange believes that user demand and the recent downward price movements in the underlying ETFs warrants a temporary increase in the number of strikes for all QOS in ETF options. Currently, the Exchange list QOS in five ETF options: (1) Nasdaq-100 Index Tracking Stock (''QQQQ''); (2) iShares Russell 2000 Index Fund (''IWM''); (3) DIA; (4) SPY; and (5) XLE. The below chart provides the historical closing prices of these ETFs over the past couple of months:

ETF	10/27/08	10/13/08	10/6/08	9/30/08	8/29/08	7/31/08
QQQQ	28.69	35.13	34.86	38.91	46.12	45.46
IWM	44.86	56.98	59.72	68.00	73.87	71.32
DIA	80.26	95.03	99.90	108.36	115.45	113.70
SPY	83.95	101.35	104.72	115.99	128.79	126.83

[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).

ETF	10/27/08	10/13/08	10/6/08	9/30/08	8/29/08	7/31/08
XLE	40.86	50.55	54.89	63.30	74.65	74.40

The additional series will enable the Exchange to list in-demand, lower priced strikes.

It is expected that other options exchanges that have adopted the QOS Pilot Program will submit similar proposals.

The Exchange represents that it has the necessary systems capacity to support the new options series that will result from this proposal. Further, as proposed, the Exchange notes that these series would temporarily become part of the pilot program and will be considered by the Commission when the Exchange seeks to renew or make permanent the pilot program in the future. In addition, the Exchange states that in the event that current market volatility continues, it may seek to continue (through a rule filing) the time period during which the additional series proposed by this filing may be added.

2. Statutory Basis

Because the current rule proposal is responsive to the current, unprecedented market conditions, is limited in scope as to QOS in ETF options and as to time, and because the additional new series can be added without presenting capacity problems, the Exchange believes the rule proposal is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[5] Specifically, the Exchange believes that the proposed rule change is consistent with the Section 6(b)(5) Act[6] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; or (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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8]

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.[9] 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–2008–111 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–2008–111. 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–2008–111 and should be submitted on or before November 28, 2008.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 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 Commission deems this requirement to be met.

[9] 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).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–26443 Filed 11–5–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58890; File No. SR–CBOE–2008–98]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Increase the Maximum Term for FLEX Options

October 30, 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 24, 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

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rules 24A.4 and 24B.4 to increase the maximum term for Flexible Exchange Options (''FLEX Options'') [5] to fifteen years. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/Legal*), at the Office of the Secretary, CBOE 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 self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to increase the maximum term for FLEX Options. Currently, the term for a FLEX Options varies based upon the type of underlying. For example, for FLEX Equity Options, the maximum term is currently 3 years, provided a member may request a longer term to a maximum of 5 years (and upon assessment by the FLEX Official that sufficient liquidity exists, such request will be granted). For FLEX Index Options, the maximum term is currently 5 years, provided a member may request a longer term to a maximum of 10 years (and upon assessment by the FLEX Official that sufficient liquidity exists, such request will be granted).[6] For FLEX Credit Options, the maximum term is currently 10.25 years.[7]

We are proposing to increase the maximum term for all FLEX Options to fifteen years and to eliminate the requirement that a FLEX Official make a liquidity assessment. The changes are being proposed to simplify the process and in response to numerous member requests that we expand the maximum term in order to accommodate their desire to bring trades that are otherwise conducted in the over-the-counter (''OTC'') market to an exchange environment. Though we want to accommodate these requests, we are not able to do so under the existing term limitations imposed in our rules.

CBOE believes that expanding the eligible term for FLEX Options as proposed is important and necessary to the Exchange's efforts to create a product and market that provides members and investors interested in FLEX-type options with an improved but comparable alternative to the OTC market in customized options, which can take on contract characteristics similar FLEX Options but are not subject to the same maximum term restriction. By expanding the eligible term for FLEX Options, market participants will now have greater flexibility in determining whether to execute their customized options in an exchange environment or in the OTC market. CBOE believes market participants benefit from being able to trade these customized options in an exchange environment in several ways, including, but not limited to the following: (1) Enhanced efficiency in initiating and closing out positions; (2) increased market transparency; and (3) heightened contra-party creditworthiness due to the role of The Options Clearing Corporation (''OCC'') as issuer and guarantor of FLEX Options. Finally, the Exchange has confirmed with the OCC that OCC can configure its systems to support FLEX Options that have a maximum expiration of fifteen years.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act [8] and the rules and regulations under the Act applicable to national securities exchanges 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 proposed rule change will provide members and investors with additional opportunities to trade customized options in an exchange environment, and investors will benefit as a result.

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.

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] FLEX Options provide investors with the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices.

[6] *See* Rules 24A.4(a)(4)(i) and 24B.4(a)(5)(i).

[7] *See* Rule 29.18.

[8] 15 U.S.C. 78s(b)(1).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and Rule 19b–4(f)(6) thereunder.[12] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2008–98 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–2008–98. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2008–98 and should be submitted on or before November 28, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–26481 Filed 11–5–08; 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, when filing a proposed rule change pursuant to Rule 19b–4(f)(6) under the Act, an Exchange is required to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange provided such notice to the Commission.

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58886; File No. SR–FINRA–2008–010]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving a Proposed Rule Change Amending the Codes of Arbitration Procedure To Establish Procedures for Arbitrators To Follow When Considering Requests for Expungement Relief

October 30, 2008.

I. Introduction

On March 13, 2008, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC''), 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 adopt Rule 12805 of the Code of Arbitration Procedure for Customer Disputes (''Customer Code'') and Rule 13805 of the Code of Arbitration Procedure for Industry Disputes (''Industry Code'') to establish procedures that arbitrators must follow when considering requests for expungement relief under Rule 2130.

The proposed rule change was published in the **Federal Register** on April 3, 2008.[3] The Commission received eleven comment letters on the proposed rule change.[4] FINRA responded to the comments on June 11, 2008.[5] The Commission received an additional letter from one commenter in furtherance of its original comments.[6] On September 3, 2008, FINRA submitted a second response to comments.[7] This order approves the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 57572 (March 27, 2008), 73 FR 18308 (April 3, 2008) (the ''Notice'').

[4] *See* letters to Nancy M. Morris, Secretary, Commission, from Seth E. Lipner, Professor of Law, Bernard M. Baruch College, CUNY, and Member Deutsch Lipner, dated April 8, 2008 (''Lipner letter''); Steven B. Caruso, Maddox Hargett Caruso, P.C., dated April 8, 2008 (''Caruso letter''); Jill Gross, Director, Pace University, Investor Rights Clinic, and Teresa Milano, dated April 15, 2008 (''Gross and Milano letter''); Raghavan Sathianathan, dated April 17, 2008 (''Sathianathan letter''); William A. Jacobson, Associate Clinical Professor, Director, Cornell Securities Law Clinic, Cornell Law School and Arthur A. Andersen III, dated April 23, 2008 (''Cornell I letter''); Barbara Black, Charles Hartsock Professor of Law, director of Corporate Law Center, University of Cincinnati dated April 24, 2008 (''Black letter''); Karen Tyler, President, North American Securities Administrators Association, North Dakota Securities Commissioner, dated April 24, 2008 (''NASAA letter''); Scott R. Shewan, Born, Pape Shewan, LLP, dated April 24, 2008 (''Shewan letter''); Barry D. Estell, dated May 7, 2008 (''Estell letter''), Brian N. Smiley, Smiley Bishop Porter LLP, dated May 8, 2008 (''Smiley letter''); and Laurence S. Schultz, President, Public Investors Arbitration Bar Association, dated May 16, 2008 (''PIABA letter'').

[5] *See* letter to Nancy M. Morris, Secretary, Commission, from Margo A. Hassan, Counsel, FINRA, dated June 11, 2008 (''First Response'').

[6] *See* letter to Nancy M. Morris, Secretary, Commission, from William A. Jacobsen, Associate Clinical Professor, Director, Cornell Securities Law Clinic, Cornell Law School, dated June 17, 2008 (''Cornell II letter'').

[7] *See* letter to Florence Harmon, Deputy Secretary [sic], Commission, from Margo A. Hassan, dated September 3, 2008 (''Second Response'').

II. Description of the Proposed Rule Change

Background

FINRA operates the Central Registration Depository (''CRD'')[8] pursuant to policies developed jointly with the North American Securities Administrators Association (''NASAA''). FINRA works with the SEC, NASAA, other members of the regulatory community, and broker-dealer firms to establish policies and procedures reasonably designed to ensure that information submitted to and maintained in the CRD is accurate and complete. These procedures, among other things, cover expungement of information from the CRD.

In December 2003, the SEC approved Rule 2130, which contains procedures for expungement of customer dispute information regarding member firms or associated persons from the CRD.[9] Under Rule 2130, FINRA members or associated persons seeking to expunge information from the CRD arising from disputes with customers must obtain an order from a court of competent jurisdiction directing expungement of information or confirming an arbitration award that contains expungement relief.[10] It also requires that FINRA members or associated persons name FINRA as an additional party in any court proceeding in which they seek an order to expunge customer dispute information or request confirmation of an award containing an order of expungement.[11]

FINRA may waive the requirement to be named as a party if it determines that the expungement relief is based on an affirmative judicial or arbitral finding that: (i) The claim, allegation, or information is factually impossible or clearly erroneous; (ii) the registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds; or (iii) the claim, allegation, or information is false. If expungement relief is based on a judicial or arbitral finding other than those above, FINRA may also waive the requirement to be named as a party if it determines that the expungement relief and accompanying findings on which it is based are meritorious and that expungement would not have a material adverse effect on investor protection, the integrity of the CRD, or regulatory requirements.[12]

According to FINRA, although arbitrators may order expungement at the conclusion of an evidentiary hearing on the merits of a case, it is more common for arbitrators to order expungement at the request of a party to facilitate settlement of a dispute. For example, as part of a settlement in which customers receive monetary compensation, the terms of that settlement require the customer to consent to (or not oppose) the entry of a stipulated award containing an order of expungement. In such cases, FINRA expected that arbitrators would examine the amount paid and any other terms and conditions of the settlement that might raise concerns about the associated person's behavior before awarding expungement.[13] Contrary to this expectation, however, arbitrators often do not inquire into the terms of settlement agreements. Recently, for example, one New York state court expressed concern because arbitrators did not describe ''a single fact or circumstance'' for their conclusion that the grounds for expungement had been met.[14] Another New York state court acknowledged that it has reservations about the existing law on expungement, which resulted in the confirmation of an award on which the arbitrator gave no explanation for his factual finding.[15]

Proposed Rule Change

Thus, FINRA developed proposed rules 12805 and 13805 which set forth procedures that arbitrators must follow before granting expungement of information from an associated person's CRD record. Specifically, under the proposed rules, in order to grant expungement of customer dispute information under Rule 2130, the panel must: (i) Hold a recorded hearing session by telephone or in person regarding the appropriateness of expungement, even if a claimant did not request a hearing on the merits; (ii) for cases involving settlements, review the settlement documents to examine the amount paid to any party and any other terms and conditions of the settlement that might raise concerns about the associated person's involvement in the alleged misconduct before awarding expungement; (iii) indicate in the arbitration award which of the grounds for expungement in Rule 2130(b)(1)(A)–(C) serves as the basis for the expungement order and provide a brief written explanation of the reason(s) for its finding that one or more grounds for expungement exists; and (iv) assess forum fees for hearing sessions in which the sole topic is the determination of the appropriateness of expungement against the parties requesting expungement.

The proposed rule change would not affect FINRA's current practice of permitting expungement, without judicial intervention, of information from the CRD as directed by arbitrators in intra-industry arbitration awards that involve associated persons and firms based on the defamatory nature of the information ordered expunged.[16]

III. Summary of Comments

As noted above, the Commission received twelve comment letters from a variety of sources. Six comments supported the proposal,[17] but a majority of those six shared a variety of concerns and suggestions for how to make the proposal more effective, as discussed in greater detail below. Five commenters opposed the proposal, and one of those commenters submitted two letters.[18]

More specifically, the commenters raised the following issues:

[8] The CRD is an online registration and licensing system used by members of the securities industry, state and federal regulators, and self-regulatory organizations. It contains administrative information (*e.g.*, personal, educational, and employment history) and disclosure information (*e.g.*, criminal matters, regulatory and disciplinary actions, civil judicial actions, and information relating to customer disputes) regarding broker-dealers and their associated persons.

[9] *See* Securities Exchange Act Release No. 48933 (December 16, 2003), 68 FR 74667 (December 24, 2003)(SR–NASD–2002–168) (the ''Expungement Order''). *See also* NASD Notice to Members 04–16 (March 2004) (NASD Adopts Rule 2130 Regarding Expungement of Customer Dispute Information From The Central Registration Depository).

[10] *See* NASD Conduct Rule 2130(a).

[11] *See* NASD Conduct Rule 2130(b).

[12] *Id.*

[13] *See* NASD Notice to Members 04–43 (June 2004) (Members' Use of Affidavits in Connection with Stipulated Awards and Settlements to Obtain Expungement of Customer Dispute Information under Rule 2130).

[14] *See Matter of Sage, Rutty & Co., Inc.* v. *Salzberg,* Index No. 2007–01942 (N.Y. Sup. Ct. May 30, 2007).

[15] *See Matter of Kay* v. *Abrams,* 853 N.Y.S.2d 862 (N.Y. Sup. Ct. February 21, 2008).

[16] In its original filing with the Commission proposing Rule 2130 (*see* SR–NASD–2002–168), NASD (now known as FINRA) explained in Footnote 2 that ''NASD may execute, without a court order, arbitration awards rendered in disputes between registered representatives and firms that contain expungement directives in which the arbitration panel states that expungement relief is being granted because of the defamatory nature of the information. These expungements are not covered by the moratorium and will not be covered by the proposed rules and policies.'' In Amendment No. 1 to that filing (at page five), NASD reiterated this point by stating ''NASD may execute, without a court order, an arbitration award rendered in a dispute between a member and a current or former associated person that contains an expungement directive in which the arbitration panel states that expungement relief is being granted based on the defamatory nature of the information.'' *See also* NASD Notice to Members 04–16 (March 2004) (NASD Adopts Rule 2130 Regarding Expungement of Customer Dispute Information From The Central Registration Depository).

[17] *See* Caruso, Gross and Milano, NASAA, Shewan, Smiley, and PIABA letters.

[18] *See* Lipner, Sathianathan, Cornell I (and in furtherance of its original comments, Cornell II), Black, and Estell letters.

Argument 1: The proposed rule may enable the party requesting expungement to use expungement findings against a customer in a subsequent proceeding based on the doctrine of collateral estoppel.[19]

Response: FINRA was not persuaded by the argument and stated it does not have the authority to dictate how parties may use an arbitral finding after the arbitration is over; other forums are not bound to accept FINRA's determination; and expungement findings, in FINRA's view, should be treated in the same manner as other arbitral findings.

An additional comment letter was submitted in rebuttal.[20] The commenter argued that nothing in FINRA's rules prohibits it from exercising power to limit the use of expungement findings; FINRA may promulgate rules regardless of whether a court will be ''bound'' by those rules; and because the expungement process is unique and has a public interest element with respect to regulatory record-keeping, FINRA would be justified in treating expungement findings in a different manner than other arbitral findings.

FINRA stated in its Second Response that modifying the proposal to prohibit collateral use of expungement findings could result in associated persons who are respondents asserting counterclaims against customers in arbitration to preserve their ability to have the claims resolved. In response to the argument that customers who settle and agree to expungement may subsequently be subject to a lawsuit alleging malicious prosecution based on the expungement findings, FINRA believes that the high evidentiary standard applied in such cases, and the fact that most customers are represented by counsel, provide sufficient safeguards for the customer.[21]

Argument 2: If customer claimants do not participate in the expungement hearing, arbitrators will hear only the requesting party's position.[22]

Response: FINRA noted that under the proposal, customers will continue to have the opportunity to attend and participate in expungement hearings in person or via telephone, and the customer may submit a written statement if he chooses not to participate or attend in person.[23] In addition, FINRA vowed to take measures to ensure that arbitrators are prepared to perform the critical fact-finding that is required by the rule proposal, whether or not a customer is present at the hearing.[24]

Argument 3: The proposed rule inadequately attempts to fix the expungement process.[25]

Argument 4: Expungement affects the integrity of the CRD by permanently deleting information that is relevant to the regulatory function of the SEC, FINRA, and the states, making the CRD an unreliable and incomplete source of information.[26] It may be possible for the public to obtain more complete records through independent investigation than regulators can obtain through the CRD.[27]

Response to Arguments 3 and 4: FINRA stated in its First Response that arguments which express opinions on the expungement process set forth in Rule 2130 are outside the scope of the present filing. Nevertheless, FINRA also stated that it believes the current proposal contains appropriate new procedures for arbitrators to follow when considering expungement requests under Rule 2130 that should help ensure that expungement is an extraordinary remedy and is granted only under appropriate circumstances. FINRA stated it believes the proposal would add transparency to the expungement process and would help enhance the integrity of information in the CRD.[28]

Argument 5: Arbitrators may not be the proper parties to make expungement decisions.[29] Related comments (i) argue that expungement decisions should be made by regulators and/or by a regulatory tribunal, not by arbitrators,[30] and (ii) question whether arbitrators may exceed their authority when considering requests for expungement.[31]

Response: FINRA believes that this argument also goes to Rule 2130 and is thus outside the scope of the proposal.[32] FINRA noted, however, that Rule 2130 requires a firm or associated person petitioning a court for expungement relief or seeking judicial confirmation of an arbitration award containing expungement relief to name FINRA as a party in the court proceeding and serve FINRA with all appropriate documents, unless FINRA waives this requirement. Therefore, FINRA is able to conduct a regulatory review of all such waiver requests and/or participate in the judicial expungement proceeding. FINRA further noted it has a process whereby it notifies the states where the individual is registered or seeking registration of the expungement notice or waiver request,[33] and if the state should wish to intervene, it may petition the court.[34] Finally, as discussed above, FINRA would revise its arbitrator training to include guidance on the proposed rule change.

Argument 6: The proposal should address the situation in which an arbitration brought against a firm that does not also name the individual broker as a party is not considered a complaint against the broker, even if the broker's name appears prominently in the text of the arbitration complaint.[35]

Response: FINRA stated in its Second Response that this issue is outside the scope of this proposal, but notes that in April 2008, it sought comment on a proposed change which would revise the customer complaint questions to elicit reporting of allegations of sales practice violations made in arbitrations or civil suits against registered persons not named as parties in those proceedings, and the proposed revisions would require firms to treat these matters as customer complaints.[36]

Argument 7: The proposal should include a provision to deter overuse of expungement, particularly in settlements and/or as a condition of monetary payment to the customer.[37]

Response: FINRA has expressly stated that expungement should be an extraordinary remedy[38] and has

[19] *See* Cornell I and Cornell II letters.

[20] *See* Cornell II letter.

[21] *See* Second Response.

[22] *See* Cornell I, NASAA, and Estell letters.

[23] *See* First Response.

[24] FINRA will notify all arbitrators of the rule change. In addition, FINRA will (i) update its online training program to reflect the new expungement guidelines and encourage all of its arbitrators to take the training; (ii) send arbitrators written materials with questions and answers; (iii) publish an article in *The Neutral Corner* explaining the new rules; (iv) conduct a call-in workshop during which staff will discuss the rule change and answer questions previously submitted by arbitrators and mediators; and (v) have a broadcast e-mail which discusses the new rules. FINRA will require arbitrators to certify in writing that they have familiarized themselves with the new rule via at least one of the training methods. Telephone call among Jean I. Feeney, Vice President and Chief Counsel, FINRA Dispute Resolution, Katherine A. England, Assistant Director, Commission, and Kristie Diemer, Special Counsel, Commission on October 29, 2008.

[25] *See* Cornell I, NASAA, and Estell letters.

[26] *See* Cornell I, Shewan, Estell, and Smiley letters.

[27] *See* Cornell I letter.

[28] *See* First Response.

[29] *See* Caruso and Cornell I letters.

[30] *See* Lipner, Black, Shewan, and PIABA letters.

[31] *See* NASAA letter.

[32] *See* Second Response.

[33] *See* NASD Notice to Members 04–16 (March 2004) (NASD Adopts Rule 2130 Regarding Expungement of Customer Dispute Information From The Central Registration Depository).

[34] *See* the Expungement Order, *supra* note 9, 68 FR at 74671.

[35] *See* Lipner, Shewan, and PIABA letters.

[36] *See* FINRA Regulatory Notice 08–20 (April 2008) (Proposed Changes to Forms U4 and U5). The comment period ended on May 27, 2008, and FINRA stated that it expects to file these changes with the Commission shortly.

[37] *See* Cornell I, NASAA, and PIABA letters.

[38] *See, e.g.* , NASD Notice to Members 01–65 (October 2001) (NASD Seeks Comment On Proposed Rules And Policies Relating To

addressed the use of customer affidavits in settlements leading to stipulated awards.[39] The proposed rule would require arbitrators to review settlement documents and consider the amount of payments made to any party as well as any other terms and conditions of the settlement. Arbitrators would be required to provide a written explanation of the reasons for finding that one or more of the grounds for expungement apply to the facts of the case. FINRA believes that the rule proposal will help ensure that arbitrators fully evaluate each request for expungement of information from the CRD.

Argument 8: Payment for settlement in excess of the reporting threshold on Forms U4 and U5 should raise a presumption that expungement is not appropriate.[40]

Argument 9: There should be an express presumption that claims should not be expunged from a representative's CRD record unless the person seeking expungement is able to overcome the presumption by a preponderance of the evidence.[41]

Response to Arguments 8 and 9: FINRA stated that because it is not proposing to amend the evidentiary standards in the Codes, these comments are outside the scope of the rule filing.[42] Nonetheless, FINRA states that the proposal requires arbitrators to evaluate fully whether the party requesting expungement either in arbitration or in connection with a settlement agreement has met the criteria promulgated under Rule 2130(b)(1)(A)–(C), and FINRA notes that the proposal requires the arbitrators, if expungement is ordered, to set forth a written explanation regarding that decision.

Argument 10: The effect of the proposal, combined with the current rule, is that there will be greater potential for broker-dealer misuse because (i) it will be more difficult to expunge defamatory information filed on CRD and will increase the power that FINRA member firms have over employees; and (ii) allegations by a whistleblower-employee of a FINRA member firm of criminal activities by the FINRA member firm or its senior executives can be expunged without judicial approval.[43]

Response: FINRA stated in its First Response that Argument 10 is outside the scope of the filing.

IV. Discussion and Commission Findings

After careful review of the proposal and consideration of the comment letters and FINRA's response to the comment letters, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to FINRA.[44] In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[45] which requires, among other things, that FINRA's rules be 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 of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission finds that the proposed rule change is reasonably designed to accomplish these ends by establishing procedures that arbitrators must follow when considering whether to grant requests for expungement either in connection with arbitration or with a settlement agreement, thus making the expungement process more transparent. The additional procedures, such as the required review of settlement documents, and the written explanation of the regulatory basis and reason for granting expungement, in the proposed rule are designed to help assure that the expungement process is not abused. This, in turn, should help ensure that investors and regulators have access to all relevant data in the CRD.

The Commission believes that FINRA has adequately addressed the issues raised by the commenters. The CRD is an important regulatory tool as well as an important tool for investors who seek information about associated persons and member firms.[46] Once information is removed from CRD via expungement it is lost to both the regulators and the investing public. Therefore, the Commission takes seriously the concerns raised by the commenters. The commenters raised concerns both of a general nature and of a specific nature. The general concerns related to the integrity of the CRD, who should make the decision to grant expungement, and the frequency with which expungement is granted. The specific concerns related to whether the new rules will result in findings that can be used in a subsequent legal proceeding based on the doctrine of collateral estoppel and the meaning of the standards in the new rules and how the standards will be applied.

The Commission agrees with FINRA that the comments about existing Rule 2130 and the expungement process itself, as well as comments with respect to whether arbitrators are the proper parties to decide if information should be expunged from CRD, are technically outside the scope of the proposed rule change.[47] The Commission notes, however, that FINRA has stated repeatedly that expungement is meant to be an extraordinary remedy,[48] and recognizes it ''should be used only when the expunged information has no meaningful regulatory or investor protection value.''[49] The Commission agrees with FINRA that expungement should be an extraordinary remedy. Information that is expunged from CRD is permanently deleted and thus no

Expungement Of Information From The Central Registration Depository); Securities Exchange Act Release No. 47435 (March 4, 2003), 68 FR 11435 (March 10, 2003)(''Rule 2130 Notice''); Second Response.

[39] *See* NASD Notice to Members 04–43 (June 2004) (Members' Use of Affidavits in Connection with Stipulated Awards and Settlements to Obtain Expungement of Customer Dispute Information under Rule 2130).

[40] *See* PIABA letter. The commenter states that this amount is currently $10,000, but FINRA recently sought comment on a proposal to increase this amount to $15,000. *See* FINRA Regulatory Notice 08–20 (April 2008) (Proposed Changes to Forms U4 and U5). The comment period ended on May 27, 2008.

[41] *See* NASAA and PIABA letters.

[42] *See* Second Response.

[43] *See* Sathianathan letter.

[44] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[45] 15 U.S.C. 78*o*–3(b)(6).

[46] *See, e.g., http://www.finra.org/Investors/ToolsCalculators/BrokerCheck/index.htm.*

[47] Another commenter's concern which FINRA stated was outside the scope of the proposal was the belief that under the proposal, allegations by a whistleblower-employee of a member firm of criminal activities by either the FINRA member firm or senior executives of a FINRA member firm could be expunged without judicial approval. The Commission urges all persons to report allegations of criminal activity to the relevant authority, regardless of the rules governing expungement. Furthermore, the Commission notes that criminal activity does not qualify for expungement under the current rule, and thus would not be more easily expunged under FINRA's proposed rules. As noted above, the arbitrator could not make an affirmative finding that one of the conditions for waiver was met, and FINRA would have to oppose the expungement. The Commission expects FINRA to review any allegations of misuse of the CRD by member firms. This is particularly important in light of the ruling in New York that broker-dealer firms have absolute immunity for statements made on U4 and U5. *See Rosenberg* v. *MetLife, Inc.,* 493 F.3d 290 (2d Cir. N.Y., June 14, 2007). CRD should not be used by broker-dealers against registered representatives. Such actions would violate FINRA rules.

[48] *See, e.g.,* NASD Notice to Members 01–65 (October 2001) (NASD Seeks Comment On Proposed Rules And Policies Relating To Expungement Of Information From The Central Registration Depository); Securities Exchange Act Release No. 47435 (March 4, 2003), 68 FR 11435 (March 10, 2003); Second Response.

[49] *See* Rule 2130 Frequently Asked Questions, *http://www.finra.org/Industry/Compliance/Registration/CRD/FilingGuidance/P005224.*

longer available to regulators or the investing public.

Under Rule 2130, FINRA must be named as a party when a respondent is seeking confirmation from a court of an expungement award. FINRA can waive its right to be named as a party in the court confirmation process, if it makes an affirmative determination consistent with Rule 2130.[50] The Commission believes that FINRA should use its authority to review expungement requests to ensure that expungement is an extraordinary remedy.[51]

With respect to the issue of whether an associated person or member will be able to use the arbitrators' written findings on expungement as collateral estoppel in a subsequent legal proceeding against the customer, FINRA believes that the high evidentiary standard that applies in such cases, and the fact that most customers are represented by legal counsel, should address this issue. The Commission believes that this is a reasonable assessment and conclusion regarding this potential situation.

As discussed, the Commission believes that having accurate and complete information in the CRD is vital; information that has regulatory value or that could assist investors in protecting themselves should not be removed from CRD.[52] Because of the central role that arbitrators have in the expungement process, the Commission believes that it is critical for arbitrators to be well-informed regarding FINRA's rules governing expungement. FINRA stated that this proposal is part of its ''continuing effort to ensure that arbitrators evaluate fully each request for expungement.'' [53] The Commission believes that the training and education FINRA provides in conjunction with the proposed rule change will be critical to the implementation and proper application of the rules. Proper training of arbitrators should help make expungement the extraordinary remedy that it was meant to be and should convey to the arbitrators the importance of their role in maintaining the integrity of the CRD.

FINRA noted that it has requested comment on amendments to address the issue of complaints that do not name a registered representative as a party. FINRA stated that it expects to file these changes with the Commission shortly.[54] The Commission does not believe that it would be in the interest of investors to delay approval of the instant proposal while that rule change is being considered by FINRA; however given the interrelationship of the issues, the Commission urges FINRA to submit this filing as soon as possible so that this information will be recorded in CRD.

In conclusion, the Commission believes that the proposed rule is consistent with the Act and will help assure that accurate information will remain in CRD and inaccurate information will be expunged. Given the importance of CRD for regulators and to customers who want to get information about registered persons or member firms before they do business with them, the Commission urges FINRA in its regulatory role to monitor how this rule is applied by arbitrators to assure that it is achieving its goals, and to propose additional changes, if needed.

V. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to FINRA, and, in particular, with Section 15A(b)(6) of the Act.[55]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[56] that the proposed rule change (SR–FINRA–2008–010) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[57]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–26442 Filed 11–5–08; 8:45 am]

BILLING CODE 8011–01–P

[50] Rule 2130(b)(2), however, does allow for exceptions under extraordinary circumstances.

[51] FINRA also provides the states with all requests for expungement and petitions so that the states have an opportunity to review them and/or participate in the hearing. The ability for FINRA and the states to participate in the expungement process is critical so that information that should remain in CRD is not expunged. The Commission expects that all regulators will take these responsibilities seriously and work cooperatively as the new rule is implemented, and thereafter. *See, e.g., UBS Financial Services, Inc.* v. *Gibson,* 851 N.Y.S.2d 75 (N.Y. Sup. Ct.)(consolidated with *Johnson* v. *Summit Equities, Inc.,* 238 N.Y.L.J. 109 (Nov. 15, 2007)); *Zaferiou* v. *Holgado,* Index No. 102996/07 (N.Y. Sup. Ct. April 14, 2008); *Matter of Kay* v. *Abrams,* 853 N.Y.S.2d 862 (N.Y. Sup. Ct. Feb. 21, 2008); and *Karsner* v. *Lothian,* 532 F.3d 876 (D.C. Cir. July 15, 2008).

[52] FINRA routinely advises investors to check CRD before they decide to do business with a firm or a broker. *See e.g., http://www.finra.org/Investors/SmartInvesting/GettingStarted/SelectingInvestmentProfessional/index.htm; http://www.finra.org/Investors/ProtectYourself/InvestorAlerts/FraudsAndScams/P01492;* and *http://www.finra.org/Investors/ProtectYourself/BeforeYouInvest/AvoidProblemswithYourBroker/index.htm.*

[53] *See* Second Response.

[54] *Id.*

[55] *Id.*

[56] 15 U.S.C. 78s(b)(2).

[57] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58891; File No. SR–NASDAQ–2008–072)]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Approving a Proposed Rule Change To Establish a PORTAL Reference Database and Related Fees

October 30, 2008.

I. Introduction

On September 16, 2008, The NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange''), filed with the Securities and Exchange Commission (''SEC'' or ''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 establish a PORTAL Reference Database and related fees. The proposed rule change was published for comment in the **Federal Register** on September 30, 2008.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

Nasdaq has created, and has proposed to make publicly available, for a fee, a consolidated fully-electronic reference database of information culled from PORTAL offering documents and applications submitted to Nasdaq since 1990.[4] Nasdaq has represented that access to the database would available to all market participants. The database would allow users to determine a PORTAL issue's name and offering description, CUSIP, country of incorporation, security class, maturity class and date, currency denomination, applicable interest and credit rating, convertibility and call provisions, total number of shares offered, and date of PORTAL designation, in addition to other information. On an ongoing basis, data regarding securities that obtain PORTAL designation would be added to the database.

Nasdaq has proposed that users of the PORTAL Reference Database would pay both an annual fee and an access fee per year of data desired. Annual fees would range between $20,000 and $100,000 and would be based on the number of users and are per calendar year. Access

[1] 15 U.S.C. 78s(b)(l).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 58622 (September 23, 2008), 73 FR 56876 (September 30, 2008)(the ''Notice'').

[4] For more information related to the background of the PORTAL Market, *see* Securities Exchange Act Release No. 55669 (April 25, 2007), 72 FR 23874 (May 1, 2007).

fees, which also range from $20,000 to $100,000, would be tiered based on the number of users authorized for access and the number of the years for which data is requested. The total cost of access to the full database would be capped based on the number of users at a particular firm.

III. Discussion and Commission Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[5] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,[6] which requires that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using any facility or system which the exchange operates or controls.

Nasdaq represented that it incurred hardware and software costs, as well as personnel and other technology costs, to establish the PORTAL Reference Database. Establishing the database required the retrieval, review, conversion, and organization of large volumes of documents. Nasdaq stated that there will be ongoing costs to maintain and update the database, as well. The Commission notes that the pricing structure should allow users to align and control the costs of access with their data needs, and that the information will be available to any participant that pays the fees. The Commission believes that the PORTAL Reference Database will make historical information about issuances of restricted equity and debt more available, which should assist market participants to make better-informed investment decisions regarding such securities.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change, (SR–NASDAQ–2008–072), be, and hereby is, approved.

[5] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–26445 Filed 11–5–08; 8:45 am]

BILLING CODE 8011–01–P

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58889; File No. SR–NYSE–2008–110]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Implementing a Financial Rebate of $.0015 per Share to the SLP That Posts Liquidity in Its Assigned Securities That Results in an Execution, Provided the SLP Meets Its Monthly Quoting Requirement for Rebates Averaging at Least 3% at the National Best Bid or the National Best Offer in Its Assigned Securities in Round Lots

October 30, 2008.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act''),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on October 28, 2008, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the 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 Exchange proposes to offer a financial rebate of $.0015 per share to the SLP that posts liquidity in its assigned securities that results in an execution, provided the SLP meets its monthly quoting requirement for rebates averaging at least 3% at the National Best Bid (''NBB'') or the National Best Offer (''NBO'') in its assigned securities in round lots.

The text of the proposed rule change is available on the Exchange's Web site (*http://www.nyse.com*), at NYSE's principal office, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

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

[3] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item 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 has proposed a six-month pilot program (''Pilot'' or ''program'') to establish a new class of NYSE market participants that will be referred to as ''Supplemental Liquidity Providers'' (''SLPs'') and will be designated as Exchange Rule 107B.[4] The proposed pilot program will commence on the date upon which the SEC will approve the New Market Model and will continue for six months thereafter ending on April 30, 2009. During this proposed pilot program, the Exchange will offer a financial rebate of $.0015 per share to the SLP that posts liquidity in its assigned securities that results in an execution, provided the SLP meets its monthly quoting requirement for rebates averaging at least 3% at the National Best Bid (''NBB'') or the National Best Offer (''NBO'') in its assigned securities in round lots.

SLP Obligations

In a given calendar month, an SLP is required to maintain a bid or an offer at the NBB or NBO on the Exchange averaging at least 5% of the trading day in round lots for each assigned security (see Rule 107B(a)). If an SLP fails to meet the 5% quoting requirement for three consecutive calendar months in any assigned security, the SLP Liaison Committee may, in its discretion, take the following non-regulatory action: (1) Revoke the assignment of the affected security(ies); (2) revoke the assignment of an additional, unaffected security from an SLP; and (3) disqualify a member organization's status as an SLP (*see* Rule 107B(i)(1)(B), (C)(i)–(iii)).

In order for an SLP to be entitled to a rebate, an SLP must post liquidity on

[4] *See* SR–NYSE–2008–108 (NYSE Rule 107B. Supplemental Liquidity Providers).

the Exchange that executes against incoming orders and meet the monthly quoting requirement averaging at least 3% at the NBB or the NBO in round lots in its assigned securities (see Rule 107B(b) and (i)(1)(A)). In a given calendar month, if an SLP maintains a quote at the NBB or the NBO averaging 3% of the trading day but less than the average of 5% of the trading day in any assigned security, the SLP will receive a financial rebate for that calendar month for all executed transactions, but failure to meet the 5% quoting requirement for each assigned security will be counted towards the three month disqualification period. In a given calendar month, if an SLP maintains a quote at the NBB or the NBO averaging less than 3% of the regular trading day in an assigned security, the SLP will not receive the financial rebate for that month for executed transactions in that particular security, and failure to meet the 5% quoting requirement for any assigned security will be counted towards the three month disqualification period (*see* Rule 107B(i)(1)(B) and (C)).

SLP Rebate Calculation

The SLP rebate will be $.0015 per share on executed volume when the SLP provides liquidity. The rebate will be paid for displayed and non-displayed orders provided the SLP meets the quoting requirement averaging 3% or more at the NBB or NBO in its assigned securities for a given month (*see* Rule 107B(i)(1)(A)). If an SLP does not meet the 3% or better average quoting requirement described above, such SLP will not be entitled to a rebate for the executions of the affected security(ies)(*see* Rule 107B(i)(1)(B)).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 [5] of the Securities Exchange Act of 1934 (the ''Act'') [6] in general and Section 6(b)(4) of the Act [7] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

The Exchange believes that by providing SLPs with a rebate for posting quotes that result in an execution, the SLP will be motivated to aggressively add liquidity to the market. The SLP rebate of $.0015 is the median fee amount between the customer rebate and the Designated Market Maker (''DMM'') rebate in the New Market Model. On balance, the customers have no quoting requirements and the SLPs have fewer quoting requirements than the DMMs. Therefore, the rebate is reasonable because, among other things, the rebate is commensurate with the SLP's quoting requirement. The SLP rebate is also less than the rebates currently offered on any other exchanges or electronic communication networks (''ECNs''). Therefore, the SLP rebate constitutes a reasonable allocation of fees to its members. By providing this rebate to SLPs, the Exchange will encourage the SLP to add liquidity to the market thereby providing customers with a higher quality venue for price discovery, liquidity, competitive quotes and price improvement.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [8] of the Act and subparagraph (f)(2) of Rule 19b–4 [9] thereunder, because it establishes a due, fee, or other charge imposed by NYSE that is applicable only to a member. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–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–NYSE–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–NYSE–2008–110 and should be submitted on or before November 28, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–26444 Filed 11–5–08; 8:45 am]

BILLING CODE 8011–01–P

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78a.

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58893; File No. SR–NYSE–2008–113]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Extend the Pilot Period for the NYSE Realtime Reference Prices Pilot Program

October 31, 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 30, 2008, the New York Stock Exchange LLC (the ''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NYSE proposes to extend the expiration date of its pilot program for the NYSE Realtime Reference Prices service until December 31, 2008. There is no new rule text.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In File No. SR–NYSE–2007–04, the Exchange established a pilot program that allows the Exchange to test the viability of a new NYSE-only market data service that allows a vendor to redistribute on a real-time basis last sale prices of transactions that take place on the Exchange (''NYSE Realtime Reference Prices'') and to establish a flat monthly fee for that service. The Commission approved that pilot program on June 16, 2008.[3]

The Exchange intends for the NYSE Realtime Reference Prices service to accomplish three goals:

1. To provide a low-cost service that will make real-time prices widely available to millions of casual investors;
2. To provide vendors with a real-time substitute for delayed prices; and
3. To relieve vendors of administrative burdens.

This pilot program is similar to pilot programs that the Nasdaq Stock Market, Inc.[4] and NYSE Arca, Inc.[5] have established.

The pilot program allows internet service providers, traditional market data vendors, and others to make available NYSE Realtime Reference Prices on a real-time basis.[6] The NYSE Realtime Reference Price information includes last sale prices for all securities that trade on the Exchange. It includes only prices, and not the size of each trade and not bid/asked quotations.

It features a flat, fixed monthly vendor fee, no user-based fees, no vendor reporting requirements, and no professional or non-professional subscriber agreements.

The Exchange established November 1, 2008 as the end date for the pilot program. The Exchange now seeks to extend that end date to December 31, 2008. Prior to the end of the pilot period, the Exchange will assess its experience with the product and either will submit a proposed rule change that seeks to extend or modify the pilot program or to make it permanent, or it will announce publicly that it does not seek to extend the pilot program beyond the program's termination date.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(4)[7] that an exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities and the requirements under Section 6(b)(5)[8] that the rules of an exchange be designed to promote just and equitable principles of trade and not to permit unfair discrimination between customers, issuers, brokers or dealers.

The Exchange believes that the pilot program benefits investors by facilitating their prompt access to widespread, free, real-time pricing information contained in the NYSE Realtime Reference Prices service. Extending the pilot program will extend those benefits while the Exchange assesses the service.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that this proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2008–113 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–NYSE–2008–113. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 57966 (June 16, 2008), 73 FR 35182 (June 20, 2008) (SR–NYSE–2007–04).

[4] *See* Securities Exchange Act Release Nos. 57965 (June 16, 2008), 73 FR 35178 (June 20, 2008) (SR–NASDAQ–2006–060); 57973 (June 16, 2008), 73 FR 35430 (June 23, 2008) (SR–NASDAQ–2008–050).

[5] *See* Securities Exchange Act Release No. 58444 (August 29, 2008), 73 FR 51872 (September 5, 2008) (SR–NYSEArca–2008–96).

[6] The Exchange notes that it will make the NYSE Realtime Reference Prices available to vendors no earlier than it makes those prices available to the processor under the CTA Plan.

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78f(b)(5).

Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2008–113 and should be submitted on or before November 28, 2008.

IV. Commission's Findings and Order Granting Accelerated Approval of a Proposed Rule Change

The Commission finds that the proposed rule change, to extend the pilot program for two months, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[9] In particular, it is consistent with Section 6(b)(4) of the Act,[10] which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other parties using its facilities, and Section 6(b)(5) of the Act,[11] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission also finds that the proposed rule change is consistent with the provisions of Section 6(b)(8) of the Act,[12] which requires that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Finally, the Commission finds that the proposed rule change is consistent with Rule 603(a) of Regulation NMS,[13] adopted under Section 11A(c)(1) of the Act, which requires an exclusive processor that distributes information with respect to quotations for or transactions in an NMS stock to do so on terms that are fair and reasonable and that are not unreasonably discriminatory.[14]

The Commission approved the fee for NYSE Realtime Reference Prices for a pilot period which runs until October 31, 2008.[15] The Commission approved the fee for NYSE Realtime Reference Prices for a pilot period which runs until October 31, 2008. The Commission notes that the Exchange proposes to extend the pilot program for two months. The Exchange proposes no other changes to the existing pilot program.

On June 4, 2008, the Commission approved for public comment a draft approval order that sets forth a market-based approach for analyzing proposals by self-regulatory organizations to impose fees for ''non-core'' market data products that would encompass the NYSE Realtime Reference Prices.[16] The Commission believes that the proposal is consistent with the Act for the reasons noted preliminarily in the Draft Approval Order. Pending review by the Commission of comments received on the Draft Approval Order, and final Commission action thereon, the Commission believes that approving NYSE's proposal to extend the pilot program that imposes a fee for NYSE Realtime Reference Prices for two months would be beneficial to investors and in the public interest, in that it should result in increased broad public dissemination of real-time pricing information. The broader approach ultimately taken by the Commission with respect to non-core market data fees will necessarily guide Commission action regarding fees for the NYSE Realtime Reference Prices beyond the pilot period.

The Commission finds good cause for approving the proposed rule change before the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Accelerating approval of this proposal should benefit investors by facilitating their access to widespread, free, real-time pricing information contained in the NYSE Realtime Reference Prices. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,[17] to approve the proposed rule change on an accelerated basis to extend the operation of the pilot until December 31, 2008, while the Commission analyzes comments on the Draft Approval Order.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–NYSE–2008–113) is hereby approved on an accelerated basis until December 31, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–26482 Filed 11–5–08; 8:45 am]

BILLING CODE 8011–01–P

[9] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78f(b)(8).

[13] 17 CFR 242.603(a).

[14] NYSE is an exclusive processor of its last sale data under Section 3(a)(22)(B) of the Act, 15 U.S.C. 78c(a)(22)(B), which defines an exclusive processor as, among other things, an exchange that distributes data on an exclusive basis on its own behalf.

[15] *See supra* note 3. NYSE subsequently reduced the flat monthly fee for NYSE Realtime Reference Prices from $100,000 per month to $70,000 per month. *See* Securities Exchange Act Release No. 58443 (August 29, 2008), 73 FR 52436 (September 9, 2008) (SR–NYSE–2008–79).

[16] *See* Securities Exchange Act Release No. 57917 (June 4, 2008), 73 FR 32751 (June 10, 2008) (Notice of Proposed Order Approving Proposal by NYSE Arca, Inc. to Establish Fees for Certain Market Data and Request for Comment) (''Draft Approval Order'').

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 6423]

In the Matter of the Review of the Designation of the Basque Fatherland and Liberty, the National Liberation Army, the Islamic Resistance Movement, Hizballah, the Popular Front for the Liberation of Palestine—GC, the Kurdistan Workers Party, the Abu Sayyaf Group, and All Associated Aliases as Foreign Terrorist Organizations Pursuant to Section 219 of the Immigration and Nationality Act, as Amended

Based upon a review of the Administrative Records assembled in this matter, and in consultation with the Attorney General and the Secretary of the Treasury, I conclude that the circumstances that were the basis for the 2003 re-designations of the aforementioned organizations as foreign terrorist organizations have not changed

in such a manner as to warrant revocation of the designations and that the national security of the United States does not warrant a revocation.

Therefore, I hereby determine that the designation of the aforementioned organizations as foreign terrorist organizations, pursuant to Section 219 of the Immigration and Nationality Act, as amended (8 U.S.C. 1189), shall be maintained.

This determination shall be published in the **Federal Register**.

Dated: October 29, 2008.

John D. Negroponte,

Deputy Secretary of State.

[FR Doc. E8–26496 Filed 11–5–08; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2008–0289]

Filing Requirements of 49 U.S.C. 14123—the Motor Carrier Financial and Operating Statistics Program (the Annual Form M Filing); Application for Exemption From Swift Transportation, Corporation

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) requests public comment on an application by Swift Transportation Corporation (Swift Transportation) regarding an exemption to the annual reporting requirements of 49 CFR 369.1. Swift Transportation is requesting the exemption on the basis that disclosing this information to the public would be likely to cause it substantial competitive harm.

DATES: Comments received on or before November 17, 2008.

ADDRESSES: You may submit comments identified by Federal Docket Management System Number FMCSA–2008—by any of the following methods:

- *Web Site: http://www.regulations.gov.* Follow the instructions for submitting comments on the Federal electronic docket site.
- *Federal Rulemaking Portal:* Go to *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: All submissions must include the Agency name and the docket ID for this notice. For detailed instructions on submitting comments and additional information on the exemption process, see the ''Public Participation'' heading below. Note that DOT posts all comments received without change to *http://www.regulations.gov*, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140, DOT Building on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476; Apr. 11, 2000). This information is also available at *http://docketsinfo.dot.gov*.

Public participation: The *http://www.regulations.gov* Web site is generally available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help and guidelines under the ''help'' section of the *http://www.regulations.gov* Web site and also at the DOT's *http://docketsinfo.dot.gov* Web site. If you want confirmation of receipt of your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

FOR FURTHER INFORMATION CONTACT: Rhonda Scott, Office of Information Technology, IT Operations Division, (202) 366–4134; Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Background

Section 14123 of Title 49 of the United States Code (U.S.C. Section 14123) requires FMCSA to collect from certain for-hire Motor Carriers Annual Financial and Safety reports. The Statute provides FMCSA the authority to exempt upon good cause any party from the reporting requirements. The implementing regulations are found at 49 CFR part 369. In accordance with 49 C.F.R. Section 369.9(e)(1), a request for an exemption must be posted in the **Federal Register.** The Agency must provide the public with an opportunity to comment on the request.

Any request for an exemption must demonstrate, at a minimum, that an exemption is required to avoid competitive harm and preserve confidential business information that is not otherwise publicly available.

Swift Transportation's Application for Exemption

On December 14, 2007, Swift Transportation applied for an exemption from 49 CFR 369.9 requesting to be exempt from disclosing confidential business information to the public on the basis that Swift Transportation is a privately held corporation and that disclosure of this information would result in competitive harm. A copy of the request is in the public docket identified at the beginning of this notice.

Request for Comments

FMCSA seeks comments on whether Swift Transportation request for an exemption from public disclosure of information otherwise required to be reported to FMCSA pursuant to 49 U.S.C. 14123 and 49 CFR 369.1. Comments should specifically address whether public disclosure of the information sought to be redacted by Swift Transportation would be likely to cause substantial harm to the carrier's competitive position.

Dated: October 27, 2008.

Rose A. McMurray,

Acting Administrator.

[FR Doc. E8–26475 Filed 11–5–08; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Agency Request for Emergency Processing of Collections of Information Associated with Today's Publication of Solicitation of Applications and Notice of Funding Availability (NOFA)

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Railroad Administration (FRA) hereby gives notice that it has submitted the following information collection request (ICR) to the Office of Management and Budget (OMB) for Emergency Processing under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3501 *et seq.*). FRA requests that OMB authorize the collection of information identified below on or before November 21, 2008, for 180 days after the date of approval by OMB. A copy of this ICR, with applicable supporting documentation, may be obtained by calling FRA's Clearance Officers, Mr. Robert Brogan (tel. (202) 493–6292) or Ms. Nakia Jackson (tel. (202) 493–6073). These numbers are not toll-free. A copy of this ICR may also be obtained electronically by contacting Mr. Brogan at *robert.brogan@dot.gov* or by contacting Ms. Jackson at *nakia.jackson@dot.gov.* Comments and questions about the ICR identified below should be directed to the Office of Information and Regulatory Affairs (OIRA), Attn: FRA OMB Desk Officer, 725 17th St., NW., Washington, DC 20503. Comments and questions about the ICR identified below may also be transmitted electronically to OIRA at *oira_submissions@omb.eop.gov*.

DATES: Comments should be submitted as soon as possible upon publication of this notice in the **Federal Register**.

Title: Notice of Funding Availability and Solicitation of Applications for Grants under the Railroad Rehabilitation and Repair Grant Program.

OMB Control Number: 2130–New.

Frequency: One-time.

Affected Public: 32 States.

Form(s): SF–424.

Other Instruments: Collection of Information Associated with the NOFA Published in Today's **Federal Register**.

Estimated Total Annual Number of Responses: 10.0 Grant Applications (Paper/Electronic).

Estimated Total Annual Burden Hours: 4,875 hours.

Abstract: On September 30, 2008, President Bush signed Public Law 110–329, The Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009. As part of this Act, Congress provided $20 million in disaster relief funds to FRA to award to States in one or more grants for eligible projects related to repair and rehabilitation of Class II and Class III railroad infrastructure damaged by hurricanes, floods, and other natural disasters in counties for which the President declared a major disaster under title IV of the Robert T. Stafford Disaster relief and Emergency Assistance Act of 1974. These funds are available for rehabilitation and repairs of railroad right-of-way, bridges, signals, and other infrastructure which are part of the general railroad system of transportation and primarily used by railroads to move freight traffic. The Secretary may retain up to one-half of 1 percent of these funds for the oversight of the design and implementation of projects funded by grants under this Program. Funds provided under this grant program may constitute no more than 80 percent of the total cost of a selected project, with the remaining cost funded from other sources. The funding provided under these grants will be made available to grantees on a reimbursement basis. FRA anticipates awarding grants to multiple eligible participants. FRA may choose to award a grant or grants within the available funds in any amount. Funding made available through grants provided under this program, together with funding from other sources that is committed by a grantee as part of a grant agreement, must be sufficient to complete the funded project and achieve the anticipated rehabilitation and repairs to Class II and Class IIII railroads. FRA will begin accepting grant applications 10 days after publication of this **Federal Register** notice. Applications may be submitted until the earlier of December 31, 2008, or the date on which all available funds will have been committed under this program.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC on November 3, 2008.

D.J. Stadtler,

Director, Office of Financial Management, Federal Railroad Administration.

[FR Doc. E8–26477 Filed 11–5–08; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Funding Availability and Solicitation of Applications for Grants under the Railroad Rehabilitation and Repair Grant Program

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of funding availability; solicitation of applications.

SUMMARY: Under this Notice, the FRA encourages interested State departments of transportation to submit applications for grants to repair and rehabilitate Class II and Class III railroad infrastructure damaged by hurricanes, floods, and other natural disasters in areas for which the President declared a major disaster after January 1, 2008, under Title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974.

DATES: FRA will begin accepting grant applications 10 days after publication of this Notice of Funding Availability in the **Federal Register**. Applications may be submitted until January 16, 2009.

ADDRESSES: Applications for grants under this Program must be submitted electronically to ''Grants.gov'' at *http://www.grants.gov.* Grants.Gov allows organizations to find and apply electronically for competitive grant opportunities from all Federal grant-making agencies. Any State wishing to submit an application pursuant to this notice should immediately initiate the process of registering with Grants.Gov. Please confirm all Grants.gov submissions by sending an e-mail to *paxrail@dot.gov.*

For application materials that an applicant is unable to submit via Grants.Gov (such as oversized engineering drawings), applicants may submit an original and two (2) copies to the Federal Railroad Administration at the following address: Federal Railroad Administration, Attention: Alice Alexander, Office of Railroad Development, 1200 New Jersey Avenue, SE., Mail Stop 20,Washington, DC 20590.

Due to delays caused by enhanced screening of mail delivered via the U.S. Postal Service, applicants are encouraged to use other means to assure timely receipt of materials.

FOR FURTHER INFORMATION CONTACT: Alice Alexander, Office of Railroad Development, Federal Railroad Administration, 1200 New Jersey Avenue, SE., Mail Stop 20, Washington,

DC 20590; Phone: (202) 493–6363; Fax: (202) 493–6333.

SUPPLEMENTARY INFORMATION: The Railroad Rehabilitation and Repair Grant Program (Catalog of Federal Domestic Assistance (CFDA) Program Number 20.314) will be supported with up to $20,000,000 of Federal funds provided to FRA as part of the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (Pub. L. 110–329, September 30, 2008.) Of this $20,000,000, one-half of 1 percent of the funds, $100,000, may be retained by the FRA to fund oversight of the design and implementation of projects funded by this Program.

Funds provided under this Program may constitute no more than 80 percent of the total cost of a selected project, with the remaining cost funded from other non-Federal sources. FRA anticipates awarding grants to multiple eligible participants. Eligible projects include repairs and rehabilitation to Class II and Class III railroad infrastructure damaged by hurricanes, floods, and natural disasters that are located in counties that have been identified in a Disaster Declaration for Public Assistance issued by the President (*http://www.fema.gov/news/disasters.fema#sev1*) in calendar year 2008.[1]

Class II and Class III railroad infrastructure eligible for repair and rehabilitation consists of railroad rights-of-way, bridges, signals and other infrastructure which are part of the general railroad system of transportation and primarily used by railroads to move freight traffic. Section 24312 (Labor Standards) of Title 49, United States Code, applies to grantees assisted under this Program. The grantees must exhaust all other Federal and State resources prior to seeking assistance under this Program. FRA anticipates that no further public notification will be made with respect to soliciting grant applications and selecting grantees under this Program.

Purpose: In 2008, the President made over sixty major disaster declarations which were related to hurricanes, floods, and other natural disasters. Funds provided under this Program will assist Class II and Class III railroads rebound from these disasters declared in 2008.[2]

Authority: The Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (Pub. L. 110–329, September 30, 2008).

Funding: The Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (the Act) provides $20,000,000, that remains available until expended, and directs the Secretary of Transportation to competitively award grants covering up to 80 percent of project costs, with the remaining project costs provided in non-Federal cash, equipment, or supplies. In addition, the Act allows the Secretary to retain up to one-half of 1 percent of the funds to fund the oversight by the Administrator of the Federal Railroad Administration of the design and implementation of projects funded by these grants. (The maximum that can be retained is $100,000.) The funding provided for these grants will be made available to the grantee(s) on a reimbursable basis. It is anticipated that the available funding could support projects proposed by multiple applicants. FRA may choose to award a grant or grants in any amount within the limit of the available funds.

Schedule for Rehabilitation and Repair Grant Program: FRA will begin accepting grant applications 10 days after publication of this Notice of Funding Availability in the **Federal Register**. All applications must be received by the January 16, 2009, deadline.

Eligible Participants: The department of transportation of any eligible State may apply for funding under this notice, provided that the applicant State has an eligible project and has exhausted all other Federal and State resources prior to seeking assistance under this Program.

Eligible Projects: To be eligible for funding under this Program, a project must include the rehabilitation and repair of Class II or Class III railroad infrastructure damaged by hurricanes, floods, and other natural disasters in counties for which the President declared a major disaster in calendar year 2008 under Title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974. Rehabilitation or repairs must be made to rights-of-way, bridges, signals, and other infrastructure which are part of the general railroad system of transportation. In addition, the railroad infrastructure replaced or rehabilitated must be primarily used to move freight traffic.

Funding Period: Funds will be available under this program only for the reimbursement of costs incurred after a major disaster declaration in calendar year 2008 in the counties covered by such a declaration.

Selection Criteria: FRA will consider the following selection factors in evaluating applications for grants under this Program:

1. The inability of the Class II or Class III railroad to fund the project without Federal grant funding.
2. The effects on rail operations, specifically the movement of freight, of the proposed rehabilitation or repair.
3. The likelihood of continued operation of the railroad operations on the track that is proposed to be repaired or rehabilitated for more than three years after project work is complete.

Requirements for Grant Applications: The following points describe the minimum content which will be required in grant applications. These requirements may be satisfied through a narrative statement submitted by the applicant and supported by spreadsheet documents, tables, drawings, and other materials, as appropriate. Each grant application must:

1. Designate a point of contact for the applicant and provide his or her name, title, and contact information, including phone number, mailing address and e-mail address. The point of contact must be an employee of the applicant.
2. Include an explanation of why the project is an eligible project and a thorough discussion of how the project meets all of the selection criteria.
3. Identify all funds (including amounts) received from other Federal and/or State disaster relief programs that directly benefited the project(s) for which funds are being sought under this Program, or demonstrate that all such efforts at procuring such funding have failed or been exhausted. This demonstration should include a recitation of specific Federal and State disaster relief programs investigated by the applicant. Among the Federal programs which the applicant might investigate are those administered by the Federal Emergency Management Administration, the Small Business Administration, the Federal Highway Administration, and the U.S. Department of Agriculture.
4. Include a complete Standard Form 424, ''Application for Federal Assistance,'' Standard Form 424D, ''Assurances—Construction Programs,'' and the most recent audit performed in compliance with OMB Circular A–133, if available. Information on Circular A–

[1] Counties in thirty-two states are eligible to apply under this program. The states are: Alabama, Alaska, Arkansas, Colorado, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, Oklahoma, South Dakota, Tennessee, Texas, Vermont, West Virginia, and Wisconsin.

[2] Inclusive dates for eligibility are January 1, 2008, through the publication date of this notice of funding availability.

133 can be found at *http://www.whitehouse.gov/omb/circulars/a133/a133.html.* Also include signed copies of FRA's Additional Assurances and Certifications, available at *http://www.fra.dot.gov/downloads/admin/assurancesandcertifications.pdf.*

5. Define the scope of work, budget and schedule for the proposed project. Describe the proposed project's physical location, mile-post limits, and include any drawings, plans, or schematics that have been prepared relating to the proposed project.

If funding requested under this Program is only going to support a portion of the overall rehabilitation and repair of the applicant's project, describe the complete project and specify which portion will involve Federal funding. In addition, FRA strongly encourages applicants to estimate complete project costs and the future financial viability of the Class II and Class III railroad on whose property the project is located.

6. The budget for the cost of the project should, to the extent possible, be separated into the following categories: (1) Administrative; (2) Engineering fees; (3) Demolition and removal; (4) Construction labor, supervision, and management; (5) Equipment; (6) Materials, by type (e.g., ties, rail, ballast, signals, and switches); (7) Contingencies; and (8) Inspection fees. Costs may be reimbursed as long as expenditures were incurred after the date of the natural disaster.

7. Describe the source and amount of non-Federal funds, broken down by cash, equipment, or supplies.

8. Describe proposed project implementation and an overview of project management arrangements.

9. For the railroad(s) operating on the infrastructure proposed to be rehabilitated or repaired, describe the frequency of service, axle-load limits, and estimated railroad gross ton miles per mile for the first full year after completion of the project.

10. Provide an overview of all work done to date to rehabilitate and repair damage caused by the natural disaster.

11. Describe the status or progress toward completing any environmental documentation or clearance for the proposed project under the National Environmental Policy Act, the National Historic Preservation Act, section 4(f) of the DOT Act, or other applicable federal or state environmental impact assessment laws. FRA's Procedures for Considering Environmental Impacts (64 Fed. Reg. 28545) (May 26, 1999) (*http://www.fra.dot.gov/us/content/166*) describe FRA's process for the assessment of environmental impacts and the preparation and processing of appropriate documents. For projects that may be categorically exempt from detailed environmental review, as discussed in FRA's Procedures, categorical exclusion worksheets are available at: *http://www.fra.dot.gov/us/content/1606.* Applicants are encouraged to contact FRA as early as possible in the environmental/historic preservation review process to discuss the environmental review.

Format: Excluding spreadsheets, drawings, and tables, the narrative statement for grant applications may not exceed twenty-five pages in length. With the exclusion of oversized engineering drawings (which may be submitted in hard copy to the FRA at the address indicated above), all application materials should be submitted as attachments through Grants.Gov. Spreadsheets consisting of budget or financial information should be submitted via Grants.Gov as Microsoft Excel (or compatible) documents.

Issued in Washington, DC, on November 3, 2008.

Mark E. Yachmetz,

Associate Administrator for Railroad Development.

[FR Doc. E8–26478 Filed 11–5–08; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket ID PHMSA–2008–0292]

Pipeline Safety: Technical Assistance Grants to Communities

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of Technical Assistance Grant Criteria.

SUMMARY: PHMSA has established the criteria and competitive procedures that will be used in awarding grants under the Technical Assistance Grants (TAG) program authorized in 49 U.S.C. 60130 and section 2(e) of the Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006. Subject to future appropriations, the TAG program will provide grants to local governments and community groups for engineering and other technical assistance related to pipeline safety matters. This Notice also details PHMSA's plans for awarding the three demonstration grants authorized under the TAG program.

FOR FURTHER INFORMATION CONTACT: Steven Fischer by e-mail at *steve.fischer@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Experience shows that informed communities play a vital role in the safety and reliability of pipeline operations. Accurate information about the location, operation, and regulation of pipelines facilitates safe land use planning, effective damage prevention programs, and fast, safe, and capable emergency response. To those ends, PHMSA has actively developed and strengthened programs to improve the flow of pipeline safety information to communities. Over the past several years, PHMSA has established its Stakeholder Communications website; staffed a Community Assistance & Technical Services Program within the Office of Pipeline Safety; offered web-casting of Pipeline Safety Trust meetings; funded invitational travel for state and local officials to participate in various planning and review committees; invited public representatives to our Pipeline Safety Advisory Committees; made transmission pipeline location information available through the National Pipeline Mapping System; and strengthened standards for pipeline operator public awareness programs. Most recently, in January 2008, PHMSA launched the Pipeline and Informed Planning Alliance to facilitate risk-informed land use and community planning.

The Technical Assistance Grants (TAG) program, first authorized in the Pipeline Safety Improvement Act of 2002 (Pub. L. 107–355, codified at 49 U.S.C. 60130), offers new opportunities to strengthen the depth and quality of public participation in pipeline safety matters. Section 9 of the Act, titled: ''Pipeline Safety Information Grants to Communities'' authorized the Secretary of Transportation to make grants to local communities and organizations for technical assistance relating to pipeline safety issues. The grants would allow communities and groups of individuals (not including for-profit entities) to obtain funding for technical assistance in the form of engineering or other scientific analysis of pipeline safety issues and help promote public participation in official proceedings. For purposes of grants eligibility, communities are defined as cities, towns, villages, counties, parishes, townships, and similar governmental subdivisions, or consortiums of such subdivisions. A nongovernmental group

of individuals is eligible for a grant under the TAG program if its members are affected or potentially affected individuals who are, or are willing to become, incorporated as a non-profit organization in the state where they are located. By law, the amount of any grant may not exceed $50,000 for a single grant recipient and the funds authorized for these grants may not be derived from user fees collected under 49 U.S.C. 60301. Although the 2002 Act authorized $1,000,000 for grant awards under the TAG program, to date, no funds have been appropriated for this purpose.

II. Competitive Procedures for Awarding Technical Assistance Grants

Beginning in 2005, PHMSA has used the Federal government-wide, web-based system Grants.gov for posting and processing all new grants programs. Grants.gov was established as a governmental resource under the E-Grants Initiative, part of the President's 2002 Fiscal Year Management Agenda to improve government services to the public. The system operates as a central storehouse for the timely and accurate exchange of information and processing of applications for Federal grant programs. Organizations and individuals who may be interested in applying for grants may register on the Grants.gov Web site to receive e-mail notification of grant postings.

Subject to appropriations, PHMSA will post notice on Grants.gov of the application deadline and selection criteria for TAG program grants. The selection criteria will be those established in this Notice, as set forth below.

PHMSA plans to use a committee of stakeholder representatives to assist in reviewing and evaluating applications under the TAG selection criteria. We have used similar multi-stakeholder committees to assist in reviewing and recommending awards for both Research and Development and State Damage Prevention Program grants. As with these grants, PHMSA will publish on our website the names of the individuals and organizations comprising the review committee and will identify the applicants selected and the amount of each grant award.

III. TAG Criteria

In keeping with Congressional intent, PHMSA has developed TAG evaluation criteria to be used to rate and select competing proposals. Together, these criteria are intended to identify projects that target high-risk areas; offer well-defined plans; foster open communication with a local community and/or affected pipeline operators; and produce results that are measurable and transferable to other communities and/or technology development.

The evaluation criteria are as follows:

1. The extent to which the Applicant's project scope is focused on areas where a pipeline failure could pose a significant risk to people or to unusually sensitive environmental areas;
2. The extent to which the proposed project scope demonstrates an understanding of the specific concern the Applicant wishes to address, as well as the range of risks affected pipelines pose to the affected geographic area and the risks the community poses to the pipelines;
3. The extent to which the proposal demonstrates the Applicant's experience with and commitment to open communication with affected operators and to partnerships with other key members of the community;
4. The extent to which the Applicant's project is designed to improve performance and safety over time in areas such as engineering, damage prevention, land use, public education, emergency response, and community awareness;
5. The extent to which the Applicant's project plan establishes clear goals, objectives, milestones, and estimates of project costs;
6. The extent to which the Applicant has a plan for evaluating and disseminating results; and
7. The extent to which the Applicant's project scope provides the potential for learning or technology transfer to other groups and communities.

IV. Demonstration Grants—Three Pilots

Section 5 of the PIPES Act requires the first three Technical Assistance Grants to be demonstration grants in amounts not exceeding $25,000 each. These demonstration grants will be funded out of general funds and will target a specific community information project—the Pipelines and Informed Planning Alliance (PIPA), as referenced above. The PIPA project has brought together a wide range of pipeline safety and local planning interests for the purpose of developing risk-informed best practices for land use and community planning. The PIPA project groups have been working on the development of draft best practices for roughly ten months and are scheduled to report their conclusions in early 2009. More information on PIPA can be found on PHMSA's Web site at *http://primis.phmsa.dot.gov/comm/PIPA.htm?nocache=458.*

The PIPA project offers an excellent opportunity to pilot test the TAG program in the context of an ongoing, previously-authorized community information project. PHMSA is working closely with the PIPA Steering Committee to identify communities interested in participating in the demonstration grants phase of the TAG program. The Steering Committee has endorsed the concept of asking the pilot communities to test draft recommended practices currently being developed by the PIPES task teams. We believe this is a valuable opportunity to advance both the TAG program and the PIPA project. However, although we anticipate awarding the three $25,000 grants designated for demonstration projects under PIPES Act section 5, we expect this amount to cover only a portion of the draft PIPA recommended practices.

In keeping with the demonstration project scope, PHMSA intends to streamline the rating process. Because we are limiting the demonstration grants to a specific community information project, we will not use the grants.gov system for applications or the full range of TAG evaluation criteria discussed above in selecting the three demonstration grant recipients. Instead, PHMSA, in consultation with the PIPA Steering Committee, will select the three pilot communities based on the Applicant's interest in pilot testing draft PIPA best practices. PHMSA and the PIPA Steering Committee will identify communities interested in focusing on PIPA related topics that are reflective of the scope and intent of the TAG criteria.

Each demonstration grant recipient will be required to provide a report to PHMSA demonstrating completion of the work as outlined in the grant agreement. Further, each recipient of a grant under section 5 must ensure that:

1. The technical findings made possible by the grants are made available to the relevant operators; and
2. Open communication is maintained between the grant recipients, local operators, local communities and other interested parties.

In reapportion for the demonstration projects, PHMSA and the PIPA Steering Committee have identified several potential projects and topics we may ask communities to investigate, including: Performing an annual review with pipeline operators having facilities within the community; mapping pipelines, abandoned pipelines and Consultation Zones in a geographic information system (GIS); drafting a model ordinance and reviewing one or more of the proposed PIPA best practices for legal issues associated with incorporating the best practices into law; developing educational material for local governments to distribute to

developers, landowners and operators about Consultation Zones; or performing Consultation Zone discussions for several developments now being planned that are in close proximity to a transmission pipeline.

Issued in Washington, DC, on October 29, 2008.

Jeffrey D. Wiese,

Associate Administrator for Pipeline Safety.

[FR Doc. E8–26506 Filed 11–5–08; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–33 (Sub-No. 271X); STB Docket No. AB–585 (Sub-No. 3X)]

Union Pacific Railroad Company—Abandonment Exemption—in Bowie County, TX; Dallas, Garland & Northeastern Railroad Company—Discontinuance of Service Exemption—in Bowie County, TX

Union Pacific Railroad Company (UP) and Dallas, Garland & Northeastern Railroad Company (DGNO) (collectively, applicants) have jointly filed a verified notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments and Discontinuances of Service* for UP to abandon, and for DGNO to discontinue service over, a 0.3-mile line of railroad known as the Bonham Industrial Lead, extending between milepost 21.5 and milepost 21.8 near New Boston, in Bowie County, TX. The line traverses United States Postal Service Zip Code 75570.

Applicants have certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to these exemptions, any employee adversely affected by the abandonment or discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, these exemptions will be effective on December 6, 2008, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by November 17, 2008. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by November 26, 2008, with: Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to applicants' representatives: (1) Gabriel S. Meyer, Assistant General Attorney, Union Pacific Railroad Company, 1400 Douglas Street, Mail Stop 1580, Omaha, NE 68179; and (2) Louis E. Gitomer, Esq., Law Offices of Louis E. Gitomer, 600 Baltimore Avenue, Suite 301, Towson, MD 21204.

If the verified notice contains false or misleading information, the exemptions are void *ab initio*.

Applicants have filed a joint combined environmental and historic report, which addresses the effects, if any, of the abandonment and discontinuance on the environment and historic resources. SEA will issue an environmental assessment (EA) by November 10, 2008. Interested persons may obtain a copy of the EA by writing to SEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 245–0305. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), UP shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by UP's filing of a notice of consummation by November 6, 2009, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: November 3, 2008.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Jeff Herzig,

Clearance Clerk.

[FR Doc. E8–26467 Filed 11–5–08; 8:45 am]

BILLING CODE 4915–01–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemptions' effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemptions' effective date.

[2] Each OFA must be accompanied by the filing fee, which is currently set at $1,500. The filing fee for an OFA increased from $1,300 to $1,500, effective July 18, 2008. *See Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services—2008 Update*, STB Ex Parte No. 542 (Sub-No. 15) (STB served June 18, 2008), which amends 49 CFR Part 1002 of the *Code of Federal Regulations*.

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities: Submission for OMB Review; 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 of an information collection titled ''Debt Cancellation Contracts and Debt Suspension Agreements—12 CFR 37.'' The OCC is also giving notice that it has submitted the collection to OMB for review.

DATES: You should submit written comments by: December 8, 2008.

ADDRESSES: Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mail Stop 1–5, Attention: 1557–0224, 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 may personally inspect and photocopy comments at the OCC's Public

Information Room, 250 E Street, SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–5043. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

Additionally, you should send a copy of your comments to OCC Desk Officer, 1557–0224, 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 H. Gottlieb, (202) 874–5090, Legislative and Regulatory Activities Division (1557–0202), 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: Debt Cancellation Contracts and Debt Suspension Agreements.

OMB Number: 1557–0224.

Description: This submission covers an existing regulation and involves no change to the regulation or the information collection. The OCC requests that OMB approve its revised estimates and renew its approval of the information collection. The estimates have been revised only to reflect the current number of national banks.

National banks are authorized under 12 U.S.C. 24 (Seventh) to enter into debt cancellation contracts (DCCs) and debt suspension agreements (DSAs) and to charge a fee in connection with these agreements. The purpose of part 37 is to set forth the standards that apply to a national bank's provision of DCCs and DSAs, enhance consumer protections for customers who buy DCCs and DSAs from national banks, and ensure that national banks providing DCCs or DSAs do so on a safe and sound basis. Part 37 requires banks to make certain disclosures to customers at the time of solicitation and prior to the purchase of DCCs and DSAs.

The disclosures are located in § 37.6. The disclosures are intended to establish standards to promote the protection of customers who buy DCCs and DSAs. The disclosures promote a customer's understanding of the costs, benefits, and limitations of the product, prevent abusive sales practices, and enable a customer to make an informed decision whether to purchase a DCC or DSA. The rule also addresses safety and soundness issues to ensure that banks offering DCCs and DSAs effectively manage their risk exposure.

The documentation found in § 37.7 is consistent with Federal Reserve Board's Regulation Z, which requires that a customer sign or initial an affirmative written request for debt cancellation coverage if fees for such coverage are to be excluded from the finance charge.[1] This helps prevent coercion and customer confusion and enables customers to make informed decisions about whether to purchase a DCC or DSA.

Disclosure Requirements

Section 37.6 requires a bank to provide the following disclosures, as appropriate:

- *Anti-tying disclosure*—A bank must inform the customer that purchase of the product is optional and neither its decision whether to approve a loan nor the terms and conditions of the loan are conditioned on the purchase of a DCC or DSA. This disclosure appears in both the short form and the long form.
- *Explanation of debt suspension agreement*—A bank must disclose, where applicable, that if a customer activates the agreement, the customer's duty to pay the loan principal and interest is only suspended and the customer must fully repay the loan after the period of suspension has expired. This disclosure appears in the long form.
- *Disclosure of the amount of the fee*—A bank must make disclosures regarding the amount of the fee. The disclosure must differ depending on whether the credit is open-end or closed-end. In the case of closed-end credit, the bank must disclose the total fee. In the case of open-end credit, the bank must either: (1) Disclose that the periodic fee is based on the account balance multiplied by a unit cost and provide the unit cost, or (2) disclose the formula used to compute the fee. This disclosure appears in the long form.
- *Disclosure concerning lump sum payment of fee*—A bank must disclose, where applicable, that a customer has the option to pay the fee in a single payment or in periodic payments. This disclosure is not appropriate for a DCC or DSA provided in connection with a residential mortgage loan because, under part 37, paying the fee in a single payment is prohibited in that case. A bank must disclose that adding the fee to the amount borrowed will increase the cost of the contract. This disclosure appears in the both the short form and long form.
- *Disclosure concerning lump sum payment of fee with no refund*—A bank must disclose, where applicable, that the customer has the option to choose a contract with or without a refund provision. This disclosure appears in both the short form and long form. This disclosure also requires a bank to inform a customer that prices of refund and no-refund products are likely to differ.
- *Disclosure concerning refund of fee paid in lump sum*—If a bank permits a customer to pay the fee in a single payment and to add the fee to the amount borrowed, the bank must disclose the bank's cancellation policy. The disclosure informs the customer that the DCC or DSA may be canceled at any time for a refund, within a specified number of days for a full refund, or with no refund. This disclosure appears in both the short form and long form.
- *Disclosure concerning whether use of credit line is restricted*—A bank must inform a customer if the customer's activation of the contract would prohibit the customer from incurring additional charges or using the credit line. This disclosure appears in the long form.
- *Disclosure concerning termination of a DCC or DSA*—A bank must explain the circumstances under which a customer or the bank could terminate the contract if termination is permitted during the life of the loan. This disclosure appears in the long form.
- *Disclosure concerning additional disclosures*—A bank must inform consumers that the bank will provide additional information before the customer is required to pay for the product. This disclosure appears in the short form.
- *Disclosure pertaining to eligibility requirements, conditions, and exclusions*—A bank must describe any material limitations relating to the DCC or DSA. This disclosure appears on both the short form and the long form. The content of the short and long form may vary, depending on whether a bank elects to provide a summary of the conditions and exclusions in the long form disclosures or refer the customer to the pertinent paragraphs in the contract. The short form requires a bank to instruct the customer to read carefully both the long form disclosures and the contract for a full explanation of the terms of the contract. The long form gives a bank the option of either separately summarizing the limitations or advising the customer that a complete explanation of the eligibility requirements, conditions, and exclusions is available in the contract and identifying the paragraphs where a customer may find that information.

[1] 12 CFR 226.4(d)(3)(i)(C).

Affirmative Election to Purchase and Acknowledgment of Receipt of Disclosures Required

Section 37.7 requires a bank to obtain a customer's written affirmative election to purchase a contract and written acknowledgment of receipt of the disclosures required by § 37.6.

If the sale of the contract occurs by telephone, the customer's affirmative election to purchase may be made orally, and the requirement to obtain the customer's acknowledgment of receipt of the required long form disclosures may be waived, provided the bank takes certain steps and maintains certain documentation.

If the contract is solicited through written materials such as mail inserts or ''take one'' applications and the bank provides only the short form disclosures in the written materials, then the bank shall mail the acknowledgment, together with the long form disclosures, to the customer. The bank may not obligate the customer to pay for the contract until after the bank has received the customer's written acknowledgment of receipt of disclosures unless the bank takes certain steps and maintains certain documentation.

The affirmative election and acknowledgment may also be made electronically.

Type of Review: Regular.

Affected Public: Businesses or other for-profit.

Number of Respondents: 1,800.

Total Annual Responses: 1,800.

Frequency of Response: On occasion.

Total Annual Burden Hours: 43,200.

An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless the information collection displays a currently valid OMB control number.

On August 26, 2008, the OCC published a notice in the **Federal Register** soliciting comments for 60 days on this information collection (73 FR 50400). One comment was received from an industry trade association. The commenter stated that obtaining a customer's written affirmative election to purchase a contract and written acknowledgement of receipt of the required disclosures is unnecessary and adds to the cost of the product. Addressing these issues would require amending the current rule. Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection 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 30, 2008.

Michele Meyer,

Assistant Director, Legislative & Regulatory Activities Division.

[FR Doc. E8–26419 Filed 11–5–08; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 13925

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 13925, Notice of Election of and Agreement To Special Lien Under Internal Revenue Code section 6324A and Regulations.

DATES: Written comments should be received on or before January 5, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to Joe Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Notice of Election of and Agreement To Special Lien Under Internal Revenue Code section 6324A and Regulations.

OMB Number: 1545–2109.

Form Number: Form 13925.

Abstract: Under IRC section 6166, an estate may elect to pay the estate tax in installments over 14 years if certain conditions are met. If the IRS determines that the government's interest in collecting estate tax is sufficiently at risk, it may require the estate provide a bond. Alternatively, the executor may elect to provide a lien in lieu of bond. Under section 6324A(c) and the regulations thereunder (OMB 1545–0757), to make this election the executor must submit a lien agreement to the IRS. Form 13925 is a form lien agreement that executors may use for this purpose.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 1 hr.

Estimated Total Annual Burden Hours: 500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology;

and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: October 31, 2008.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E8–26422 Filed 11–5–08; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Thursday,
November 6, 2008

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

Taking Marine Mammals Incidental to Specified Activities; Seismic Surveys in the Beaufort and Chukchi Seas; Notice

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD76

Taking Marine Mammals Incidental to Specified Activities; Seismic Surveys in the Beaufort and Chukchi Seas

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

ACTION: Notice of Issuance of an Incidental Harassment Authorization.

SUMMARY: In accordance with regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that an Incidental Harassment Authorization (IHA) to take small numbers of marine mammals, by harassment, incidental to conducting a marine geophysical program, including deep seismic surveys, on oil and gas lease blocks located on Outer Continental Shelf (OCS) waters in the mid- and eastern-Beaufort Sea and in the Northern Chukchi Sea has been issued to Shell Offshore, Inc. (SOI) and WesternGeco.

DATES: Effective from August 19, 2008 through August 18, 2009.

ADDRESSES: SOI's IHA application and the IHA are available by writing to Mr. P. Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225. A copy of the application (containing a list of the references used in this document), the 2008 Supplemental Environmental Assessment (S-EA) and related documents may be obtained by writing to this address or by telephoning the contact listed here and are also available at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#iha*. Documents cited in this document, that are not available through standard public library access methods, may be viewed, by appointment, during regular business hours at the address provided here.

FOR FURTHER INFORMATION CONTACT: Kenneth Hollingshead, Office of Protected Resources, NMFS, (301) 713–2289, or Brad Smith, NMFS, Alaska Regional Office 907–271–3023.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Section 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization.

Summary of Request

On October 16, 2007, NMFS received an application from SOI for the taking, by harassment, of several species of marine mammals incidental to conducting a marine seismic survey program during the open water season between August 1, 2008, and July 31, 2009 (referred to in this document as 2008/2009). SOI proposed to conduct a variety of programs in the Chukchi and Beaufort Seas during the 2008/2009 open water seasons, including a: (1) Chukchi Sea deep 3–D seismic survey; (2) Beaufort Sea deep 3–D seismic survey; and (3) Beaufort Sea marine surveys, which includes three activities: (a) site clearance and shallow hazards surveys; (b) an ice-gouge survey; and (c) a strudel scour survey.

The deep seismic survey components of the program will be conducted from WesternGeco's vessel, the *M/V Gilavar*. Detailed specifications on this seismic survey vessel are provided in Attachment A of SOI's IHA application. These specifications include: (1) complete descriptions of the number and lengths of the streamers which form the hydrophone arrays; (2) airgun size and sound propagation properties; and (3) additional detailed data on the *M/V Gilavar*'s characteristics. In summary, the *M/V Gilavar* will tow two source arrays, comprising three identical subarrays each, which will be fired alternately as the ship progresses downline in the survey area. The *M/V Gilavar* will tow up to 6 streamer cables up to 5.4 kilometers (km)(3.4 mi) long. With this configuration each pass of the *M/V Gilavar* can record 12 subsurface lines spanning a swath of up to 360 meters (1181 ft). The seismic acquisition vessel will be supported by the *M/V Gulf Provider*, or a similar vessel. The *M/V Gulf Provider* will serve as a crew change, resupply, fueling support of acoustic and marine mammal monitoring, and seismic chase vessel. It will not deploy seismic acquisition gear.

As SOI's 2007 IHA for open water seismic activities in the Chukchi and Beaufort Seas was valid until August 1, 2008 (subsequently amended to run through August 18, 2008), this IHA request is intended, therefore, for the open water seasons between August 19, 2008 through August 18, 2009.

As marine mammals may be affected by seismic and vessel noise, SOI has requested an authorization under section 101(a)(5)(D) of the MMPA to take marine mammals by Level B harassment while conducting seismic surveys and related activities.

Plan for Seismic Operations

In its application, SOI noted that it plans for the *M/V Gilavar* to be in the Chukchi Sea to begin seismic acquisition data on or after July 20, 2008, move to the Beaufort Sea in mid-August through late October, and conclude work in the Chukchi Sea around November 15, 2008. SOI later modified its plan to delay moving into the Beaufort Sea until early September and not start seismic operations until the conclusion of the fall bowhead whale subsistence harvest ends. For

purposes of the MMPA, the Chukchi and Beaufort seas meet the definition of a ''specific geographic region'' as defined under the Act, as they can be considered to have similar biogeographic characteristics. In addition, the areas in which SOI proposes to conduct their activities (e.g., LS 193 in the Chukchi Sea; Sivulluq in the Beaufort Sea) are well defined geographic regions. As proposed by SOI, the 2008 seismic survey effort will have approximately 100 days of active data acquisition (excluding downtime due to weather and other unforeseen delays). Around September 1st, SOI's seismic and associated vessels will transit to the Beaufort Sea to conduct seismic operations for part of this 100–day period. A commencement date of July 20th for starting seismic in the Chukchi Sea was designed to ensure that there would be no conflict with the spring bowhead whale migration and subsistence hunts conducted by Barrow, Pt. Hope, Pt. Lay, or Wainwright or the beluga subsistence hunt conducted by the village of Pt. Lay in early July. The approximate area of SOI's Chukchi Sea and Beaufort Sea seismic survey operations are shown in Figures 1 and 2 in SOI's IHA application, respectively.

3–D Deep Seismic Surveys

Chukchi Sea 3–D Deep Seismic Surveys

SOI and its geophysical (seismic) contractor, WesternGeco, are conducting a marine geophysical (deep 3–D seismic) survey program during the open water season on various Minerals Management Service's (MMS) Outer Continental Shelf (OCS) lease blocks in the northern Chukchi Sea (see Figure 1 in SOI's IHA application). The Chukchi Sea 3–D Deep Seismic survey will be conducted on leases obtained under Lease Sale (LS) 193. The exact locations where operations will occur within that sale area were not known at the time of SOI's IHA application, but NMFS presumes they will take place on lease blocks obtained as a result of the sale. However, in general SOI notes that the seismic data acquisition will occur at least 25 mi (40 km) offshore of the coast and in waters with depths averaging about 40 m (131 ft).

The deep 3–D seismic survey will be conducted from WesternGeco's vessel *M/V Gilavar*, described previously. Two ''chase boats'' will accompany the seismic vessel. These two chase boats will provide the following functions: (1) re-supply, (2) marine mammal monitoring, (3) ice scouting, and (4) general support for the *M/V Gilavar*. The chase boat vessels for use in 2008 are the *M/V Theresa Marie* and the *M/V Torsvik*. These vessels will not deploy any seismic gear. In addition, a crew change vessel, the *M/V Gulf Provider* or similar vessel and a landing craft, such as the *M/V Maxime* or similar vessel, will support the *M/V Gilavar*, and the two chase boats in the Chukchi Sea. The crew change vessel will be used to move personnel and supplies from the seismic vessel, and two chase boats to the nearshore areas. In turn, the landing craft will move personnel and supplies from the crew change vessel, when it is located in nearshore areas, to the beach (most likely this will be at Barrow). Lastly, the Marine Mammal Monitoring and Mitigation Program (4MP) will have a separate vessel for the 2008 4MP Program. The landing craft also will be used to move personnel and equipment from the 4MP vessel to the near shore areas.

Beaufort Sea Deep 3–D Seismic Surveys

The same seismic vessel (*M/V Gilavar*), seismic equipment, and chase boats that are described for the Chukchi Sea Deep 3–D Seismic survey, will be used to conduct deep 3–D seismic surveys in the central and eastern Beaufort Sea (see Figure 2 in SOI's IHA application). The focus of this activity will be on SOI's existing leases, but some activity in the Beaufort Sea may occur outside of SOI's existing leases. The landing craft, which will be used to move personnel and supplies from vessels in the near shore to docking sites will most likely use West Dock, or Oliktok Dock. Smaller vessels such as the Alaska Clean Seas (ACS) bay boats, or similar vessels, may be used to assist in the movement of people and supplies and support of the 4MP in the Beaufort Sea. The specific geographic region for SOI's deep seismic program in the Beaufort Sea will be in OCS waters including SOI leases beginning east of the Colville River delta to west of the village of Kaktovik (see Figure 2 in SOI's application). According to SOI's IHA application, the Beaufort Sea program is planned to occur for a maximum of 60 days (excluding downtime due to weather and unforeseen delays) during open-water from mid-August to the end of October; however, recent communications with SOI indicates that the Beaufort Sea seismic program will not start until September 2008. This timing of activities in the fall will avoid any conflict with the Beaufort Sea bowhead whale subsistence hunt conducted by the Beaufort Sea villages, because it is anticipated that the fall bowhead whale hunt will have ended by that time.

Description of Marine 3–D Seismic Data Acquisition

In the seismic method, reflected sound energy produces graphic images of seafloor and sub-seafloor features. The seismic system consists of sources and detectors, the positions of which must be accurately measured at all times. The sound signal comes from arrays of towed energy sources. These energy sources store compressed air which is released on command from the towing vessel. The released air forms a bubble which expands and contracts in a predictable fashion, emitting sound waves as it does so. Individual sources are configured into arrays. These arrays have an output signal, which is more desirable than that of a single bubble, and also serve to focus the sound output primarily in the downward direction, which is useful for the seismic method. This array effect also minimizes the sound emitted in the horizontal direction.

The downward propagating sound travels to the seafloor and into the geologic strata below the seafloor. Changes in the acoustic properties between the various rock layers result in a portion of the sound being reflected back toward the surface at each layer. This reflected energy is received by detectors called hydrophones, which are housed within submerged streamer cables which are towed behind the seismic vessel. Data from these hydrophones are recorded to produce seismic records or profiles. Seismic profiles often resemble geologic cross-sections along the course traveled by the survey vessel.

Description of WesternGeco's Air-Gun Array

In 2008, SOI used WesternGeco's 3147–in^3 Bolt-Gun Array for its 3–D seismic survey operations in the Chukchi and Beaufort Seas. WesternGeco's source arrays are composed of 3 identically tuned Bolt-gun sub-arrays operating at an air pressure of 2,000 psi. In general, the signature produced by an array composed of multiple sub-arrays has the same shape as that produced by a single sub-array while the overall acoustic output of the array is determined by the number of sub-arrays employed.

The airgun arrangement for each of the three 1049–in^3 sub-array is detailed in SOI's application. As indicated in the application's diagram, each sub-array is composed of six tuning elements; two 2–airgun clusters and four single airguns. The standard configuration of a source array for 3–D surveys consists of one or more 1049–in^3 sub-arrays. When

more than one sub-array is used, as here, the strings are lined up parallel to each other with either 8 m or 10 m (26 or 33 ft) cross-line separation between them. This separation was chosen so as to minimize the areal dimensions of the array in order to approximate point source radiation characteristics for frequencies in the nominal seismic processing band. For the 3147–in^3 array the overall dimensions of the array are 15 m (49 ft) long by 16–m (52.5–ft) wide.

Characteristics of Airgun Pulses

A discussion of the characteristics of airgun pulses was provided in several previous **Federal Register** documents (see 69 FR 31792 (June 7, 2004) or 69 FR 34996 (June 23, 2004)) and is not repeated here. Additional information can be found in the NMFS/MMS Draft PEIS (see **ADDRESSES**). Reviewers are encouraged to read these earlier documents for additional background information.

Marine Surveys

Marine surveys (shallow hazards and other activities) were conducted by SOI in the Beaufort Sea in 2008. Acoustic systems similar to the ones being used by SOI during its marine surveys have been described by NMFS previously (see 66 FR 40996 (August 6, 2001), 70 FR 13466 (March 21, 2005)). NMFS encourages readers to refer to these documents for additional information on these systems. A summary of SOI's marine survey activities is described next.

Beaufort Sea Marine Surveys

SOI conducted three marine survey activities in 2008 in the U.S. Beaufort Sea: (1) Site Clearance and Shallow Hazards (2) Ice Gouge Surveys, and (3) Strudel Scour Surveys. Marine surveys for site clearance and shallow hazards, ice gouge, or strudel scour in the Beaufort Sea was accomplished by the *M/V Henry Christofferson*. No other vessels, such as chase boats, were necessary to accomplish this marine survey work. Any necessary crew changes or 4MP coordinated activities under this activity utilized the same crew change, landing craft, or 4MP vessel mentioned under the Beaufort Sea Deep 3–D Seismic survey.

Site Clearance and Shallow Hazards

Marine surveys include site clearance and shallow hazards surveys of potential exploratory drilling locations. These surveys gather data on: (1) bathymetry, (2) seabed topography and other seabed characteristics (e.g., boulder patches), (3) potential geohazards (e.g., shallow faults and shallow gas zones), and (4) the presence of any archeological features (e.g., shipwrecks).

The focus of this activity was on SOI's existing leases in the central and eastern Beaufort Sea, but some activity may have occurred outside of SOI's existing leases. Actual locations of site clearance and shallow hazard surveys occurred within the area outlined in Figure 2 of SOI's IHA application.

The *M/V Henry Christofferson* was used by SOI for the site clearance and shallow hazards surveys. This vessel is a diesel-powered tug as described in Attachment A to SOI's IHA application. The following acoustic instrumentation was used for this work. This is the same equipment that was used on the *M/V Henry Christofferson* during 2007:

(1) Dual frequency subbottom profiler Datasonics CAP6000 Chirp II (2 to7 kiloHertz [kHz] or 8 to 23 kHz) or similar;

(2) Medium penetration subbottom profiler, Datasonics SPR–1200 Bubble Pulser (400 (hertz [Hz]) or similar;

(3) High resolution multi-channel 2D system, 20 cubic inches (in^3) (2 by 10 in^3) gun array (0 to 150 Hz) or similar;

(4) Multi-beam bathymetric sonar, Seabat 8101 (240 Hz); or similar; and

(5) Side-scan sonar system, Datasonics SIS–1500 (190 to 210 kHz) or similar.

Ice Gouge Survey

Ice gouge surveys are a type of marine survey to determine the depth and distribution of ice gouges in the sea bed. Ice gouge is created by ice keels which project from the bottom of moving ice that gouge into seafloor sediment. Remnant ice gouge features are mapped to aid in predicting the prospect of, orientation, depth, and frequency of future ice gouge. These surveys focused on the potential, prospective pipeline corridor between the Sivulliq Prospect in Camden Bay and the nearshore Point Thomson area. The Sivulliq area was surveyed to gather geotechnical and seafloor hazard information as well as data on ice gouges.

SOI used the acoustic instrumentation described previously in this document, namely multi-beam bathymetric sonar, side scan sonar and subbottom profiling. The locations of the ice gouge surveys occurred within the area outlined in Figure 2 of SOI's IHA application.

Strudel Scour Survey

During the early melt on the North Slope, the rivers begin to flow and discharge water over the coastal sea ice near the river deltas. That water rushes down holes in the ice (''strudels'') and scours the seafloor. These eroded areas are called ''strudel scours''. Information on these features is required for prospective pipeline planning. Two activities are required to gather this information.

First, an aerial survey is conducted via helicopter overflights during the melt to locate the strudels; and strudel scour marine surveys to gather bathymetric data. The overflights investigate possible sources of overflood water and will survey local streams that discharge in the vicinity of Point Thomson including the Staines River, which discharges to the east into Flaxman Lagoon and the Canning River, which discharges to the east directly into the Beaufort Sea.

Second, areas that have strudel scour identified during the aerial survey were surveyed with a marine vessel after the breakup of nearshore ice. This operation was conducted in the shallow water areas near the coast in the vicinity of Point Thomson. The diesel-powered *M/V Anika Marie* used the following equipment to conduct this work:

(1) Multi-beam bathymetric sonar, Seabat 8101 (240 Hz); or similar sonar; and

(2) Side-scan sonar system, Datasonics SIS–1500 (190 to 210 kHz) or similar sonar.

The multi-beam bathymetric sonar and the side-scan sonar systems both operate at frequencies greater than 180 kHz, the highest frequency considered by knowledgeable marine mammal biologists to be of possible influence to marine mammals. Because no taking of marine mammals will occur from this equipment, no measurements of those two sources are planned by SOI, and no exclusion zones for seals or whales would be established during operation of those two sources. The acoustic instrumentation used on the seismic vessels are described in SOI's IHA application.

Chukchi Sea Marine Surveys

Marine surveys planned for the Chukchi Sea were to include site clearance and shallow hazards surveys of potential exploratory drilling locations as required by MMS regulations. These surveys were to gather data on: (1) bathymetry, (2) seabed topography and other seabed characteristics (e.g., boulder patches), (3) potential geohazards (e.g., shallow faults and shallow gas zones), and (4) the presence of any archeological features (e.g., shipwrecks). Marine surveys for site clearance and shallow hazards can be accomplished by one vessel with acoustic sources.

The Chukchi Sea marine surveys were to be conducted on leases acquired in

OCS LS 193. Site clearance surveys are confined to small specific areas within OCS blocks. Site clearance and shallow hazard survey locations were planned to occur within the general area outlined in Figure 1 in SOI's IHA application. However, due to vessel contract issues in the earlier part of the season and an ongoing bowhead whale subsistence hunt in the Chukchi Sea in the fall, this work was not conducted in 2008.

Additional Information

A detailed description of SOI's work during the open-water seasons of 2008/2009 is contained in SOI's application (see **ADDRESSES**). Also, a description of SOI's data acquisition program for the 2008/2009 season, and WesternGeco's air-gun array to be employed during 2008/2009 has been provided in previous IHA notices on SOI's seismic program (see 71 FR 26055, May 3, 2006; 71 FR 50027, August 24, 2006), and is not repeated here.

Comments and Responses

A notice of receipt of SOI's MMPA application and NMFS' proposal to issue an IHA to SOI was published in the **Federal Register** on June 25, 2008 (73 FR 36044). That notice described, in detail, SOI's seismic survey activity, the marine mammal species that may be affected by the activity, and the anticipated effects on marine mammals. During the 30–day public comment period on SOI's application, comments were received from the Marine Mammal Commission (Commission), EarthJustice (on behalf of themselves, the Center for Biological Diversity, Northern Alaska Environmental Center, The Wilderness Society, Sierra Club, Pacific Environment, Resisting Environmental Destruction on Indigenous Lands, Alaska Wilderness League, the Natural Resources Defense Council, and Native Village of Point Hope), the Alaska Eskimo Whaling Commission (AEWC), the North Slope Borough (NSB), and Oceana. The AEWC submitted comments on the Conflict Avoidance Agreement (CAA), which are addressed in this notice, but also submitted comments in regard to Alternative 9 in NMFS/MMS' 2007 Draft Programmatic EIS for Arctic Ocean Seismic Surveys. As the Final Programmatic EIS remains under development and as the comment period on that document closed in late 2007, NMFS will restrict its response to that part of the letter concerning the CAA. Additional responses to concerns raised by the public during public comments can be found at 73 FR 40512 (July 15, 2008) for BP Exploration (Alaska), Inc. in the Beaufort Sea, 73 FR 45969 (August 7, 2008) for PGS Onshore, Inc. in the Beaufort Sea; at 73 FR 46774 (August 11, 2008) for ASRC Energy Services, Inc. (AES) in the Chukchi Sea; and at 73 49421 (August 21, 2008) for ConocoPhillips, Inc. in the Chukchi Sea.

Activity Concerns

Comment 1: The NSB notes that AES has applied for an IHA for site clearance and shallow hazards surveys in the Chukchi Sea. AES surveys will be conducted for Shell. How do Shell's proposed marine surveys relate to AES? Are both organizations applying for IHAs for the same work? If so, this creates a tremendous amount of unnecessary duplicative work.

Response: At the time of its IHA application, AES planned to conduct shallow hazard work in the Chukchi Sea on behalf of several clients who had obtained leases as a result of Lease Sale 193. One of those clients was SOI. However, the Chukchi Sea shallow hazards survey work for SOI was not conducted this year. NMFS continues to encourage the offshore oil industry to combine seismic/shallow hazard survey efforts onto one or two vessels whenever possible to reduce potential noise impacts on marine mammals. Subsequent to NMFS processing IHA applications for SOI and other companies, SOI determined that in order to ensure that their proposed shallow hazard survey in the Chukchi Sea was conducted this year, it proposed to move a vessel stationed in the Beaufort Sea into the Chukchi Sea to conduct this work, if the AES was unable to do this work. NMFS believes that, while there was duplication this year, if, in future years, these operations can be combined onto a single vessel, those efforts would be beneficial to marine mammals.

MMPA Concerns

Comment 2: EarthJustice and the NSB state that because the proposed seismic activity carries the real potential to cause injury or death to marine mammals, neither an IHA, nor an LOA (because NMFS has not promulgated regulations for mortality by seismic activities) can be issued for SOI's proposed seismic survey activities.

Response: Section 101(a)(5)(D) of the MMPA authorizes Level A (injury) harassment and Level B (behavioral) harassment takes. While NMFS' regulations indicate that a LOA must be issued if there is a potential for serious injury or mortality, NMFS does not believe that SOI's seismic surveys require issuance of a LOA. As explained throughout NMFS' proposed IHA **Federal Register** Notice (73 FR 36044, June 25, 2008) and this **Federal Register** Notice, it is highly unlikely that marine mammals would be exposed to sound pressure levels (SPLs) that could result in serious injury or mortality. The best scientific information indicates that an auditory injury is unlikely to occur as apparently sounds need to be significantly greater than 180 dB for injury to occur (Southall *et al.*, 2007).

NMFS has determined that exposure to several seismic pulses at received levels near 200–205 dB (rms) might result in slight temporary threshold shift (TTS) in hearing in a small odontocete, assuming the TTS threshold is a function of the total received pulse energy. Seismic pulses with received levels of 200–205 dB or more are usually restricted to a radius of no more than 200 m (656 ft) around a seismic vessel operating a large array of airguns. To understand this better, one must recognize that (1) the 180–dB zone is approximately 2500 m (8202 ft) beam-fire and 210 m (689 ft) for/end fire direction (Tables 3, 4 in MacGillivray *et al.* (2007)). The seismic airgun array is approximately 490 m (1608 ft) off the stern of the *M/V Gilavar*. Each of the *Gilavar*'s two airgun arrays is 15 m (49 ft) long and 16 m (52.5 ft) wide. The hydrophone cable array is approximately 500 m (1640 ft) wide and 4200 m (2.6 mi) active length. In addition, the *M/V Gilavar* is approximately 85 m (279 ft) long, 18 m (59 ft) wide. Therefore, NMFS believes that in order for a marine mammal to incur an auditory injury, it would be necessary for the marine mammal to be undeterred by seismic, ship, or hydrophone (turbulence) noises, and not be sighted by Marine Mammal Observers (MMOs) within this area. NMFS believes it is highly unlikely that marine mammals would intentionally enter into the turbulent area behind a moving vessel between the vessel, the seismic airgun array and the hydrophone array with supporting cables, wires and separators (although bottlenose dolphins have been reported on occasion by MMOs to approach and rub against the outside streamers). As a result, no marine mammals would likely incur either TTS or PTS, simply because they are likely to avoid the area directly behind the vessel. Furthermore, the dimensions of the ship also tends to preclude marine mammal entry into the area immediately ahead of the airguns. Essentially, bridge-stationed MMOs need to see only about 157 m (515 ft) abeam (to the side) of the vessel in order to ensure that no marine mammals enter the 200–m (656–ft) area for potential Level B harassment (TTS) zone

(presuming that 205 dB rms is about 200 m (656 ft) from the array). It is highly likely that MMOs would be able to detect marine mammals approaching this area and order a power-down or shut-down of the seismic array.

Moreover, Smultea and Holst (2003) and Holst (2004) report on two tests of the effectiveness of monitoring using night-vision devices (NVDs). Results of those tests indicated that the Night Quest NQ220 NVD is effective at least to 150 to 200 m (492 to 656 ft) away under certain conditions, but not at distances greater than 200 m (656 ft). However, it is in this smaller 200–m zone, where the received level is well above 180 dB, where the detection of any marine mammals that are present would be of particular importance. This zone for potential TTS and PTS is therefore sufficiently within the range of the NVDs to allow detection of marine mammals within the area of potential TTS during night-time seismic operations.

For baleen whales, while there are no data, direct or indirect, on levels or properties of sound that are required to induce TTS, there is a strong likelihood that baleen whales (bowhead and gray whales) would avoid the approaching airguns (or vessel) before being exposed to levels high enough for there to be any possibility of onset of TTS. For pinnipeds, information indicates that for single seismic impulses, sounds would need to be higher than 190 dB rms for TTS to occur while exposure to several seismic pulses indicates that some pinnipeds may incur TTS at somewhat lower received levels than do small odontocetes exposed for similar durations. Consequently, NMFS has determined that it was in full compliance with the MMPA when it issued an IHA to SOI for the 2008/2009 seismic survey program.

Comment 3: The NSB states that the activities proposed by SOI are not sufficiently described in either the **Federal Register** Notice or SOI's IHA application. Stating the dates and durations of activities in uncertain terms also makes it impossible for NMFS to assess whether SOI's activities will interfere with the subsistence hunting seasons. Because SOI has not sufficiently specified the geographic location, date, and duration of activities, NMFS cannot lawfully issue the IHA.

Response: NMFS disagrees with the statement. In regard to dates of SOI's seismic survey activities, SOI made clear in its IHA application that the ''dates and duration of the activity'' is for a one-year period during the open water period of 2008 and 2009. This statement meets the requirements of the MMPA. As a result of discussions with SOI, the NSB and the AEWC are aware that because of measures taken to protect the spring whale harvests in the Chukchi Sea, the start of seismic surveys cannot begin prior to July 20th in the Chukchi Sea and cannot move into the Beaufort Sea before ice conditions allow (around mid August). However, in regards to 2008, SOI has stated to the NSB that they will leave the Chukchi Sea on September 1st (as required by the CAA) and will not start shooting 3D seismic in the Beaufort Sea until the bowhead whale subsistence hunt at Kaktovik and Nuiqsut ends. SOI planned to return to the Chukchi Sea after about 20 days of shooting seismic or when weather conditions curtail seismic surveys in the Beaufort Sea, whichever is earlier. However, it was unable to collect seismic data and ended its 2008 seismic season on or about October 15, 2008.

In regards to the requirement that the activity area be specified, NMFS defines ''specified geographical region'' as ''an area within which a specified activity is conducted and which has certain biogeographic characteristics'' (50 CFR 216.103). In regard to how specific one must be to define a ''specific geographic region'' within which the activity would take place, House Report 97–228 states:

> The specified geographic region should not be larger than is necessary to accomplish the specified activity, and should be drawn in such a way that the effects on marine mammals in the region are substantially the same. Thus, for example, it would be inappropriate to identify the entire Pacific coast of the North American continent as a specified geographic region, but it may be appropriate to identify particular segments of that coast having similar characteristics, both biological and otherwise, as specified geographical regions.

NMFS believes that the U.S. Beaufort and Chukchi Seas meet Congressional intent and NMFS' definition because these two regions have similar geographic, physiographic (e.g., topography, temperature, sea ice), biologic (e.g., marine fauna (fish and marine mammals)), and sociocultural characteristics. Therefore, NMFS believes that SOI's description of the activity and the locations for conducting seismic surveys meet the requirements of the MMPA. Within the Chukchi Sea, SOI intends to conduct seismic activity within those areas contained in Lease Sale 193 area that were awarded to it by the MMS (shown in Figure 1 in SOI's IHA application). These areas were awarded after SOI submitted its IHA application, so they were unknown to SOI at the time of its IHA application. Regardless, the general Lease Sale 193 area more than meets the definition of ''specific geographic region'' as defined by NMFS. Also, more specific locations may be considered proprietary, depending upon whether the location is a potential future lease area. In the Beaufort Sea, the areas of seismic operations are shown in Figure 2 in SOI's IHA application. These are fairly specific regions and, therefore, NMFS believes that SOI has provided a well defined area within which certain biogeographic characteristics occur in compliance with the MMPA and Congressional intent.

Comment 4: The AEWC states that the MMPA does not guarantee a company a 12–month term when it applies for an IHA. If a company seeks authorization to operate for longer than a single season, it should be required to apply for an LOA for the term of years it wishes to work.

Response: Section 101(a)(5)(D)(i) of the MMPA states that: ''Upon request therefor by citizens of the United States who engage in a specified activity (other than commercial fishing) within a specific geographic region, the Secretary shall authorize, for periods of not more than 1 year, subject to such conditions as the Secretary may specify, the incidental, but not intentional, taking by harassment of small numbers of marine mammals of a species or population stock by such citizens while engaging in that activity within that region....''

As noted, the MMPA does not limit the issuance of an IHA to a single open water season (~July 20 to ~November 15 in the U.S. Beaufort and Chukchi Seas), a period of less than 4 months, and even less available time if an applicant's activity is located in an area subject to area closure due to native subsistence hunting. Moreover, an IHA that is effective over the course of two open water seasons does not necessarily result in an IHA that exceeds 1 year. For example, in the current case, SOI's IHA spans the course of two seismic seasons, but expires in the middle of the 2009 open water season. Provided the IHA application includes an analysis of the specified activities during the timeframe proposed by the applicant, NMFS will consider issuing an IHA that extends into a portion of the following year. NMFS agrees that, if industry wants a multi-year LOA for a period of 2 or even 3 years, it can apply under section 101(a)(5)(A) of the MMPA.

Comment 5: The NSB and EarthJustice are concerned that NMFS has not made separate findings for both small numbers and negligible impact. EarthJustice states that not withstanding the unlawful regulation, the proposed IHA fails to support a non-arbitrary finding that only ''small numbers'' of

marine mammals will be harassed by SOI's planned activities. The NSB states a similar concern.

Response: NMFS believes that the small numbers requirement of the MMPA has been satisfied. The species most likely to be harassed during seismic surveys in the Arctic Ocean area is the ringed seal, with a total ''best estimate'' of 13,256 animals being ''exposed'' to sound levels of 160 dB or greater (6,951 animals in the Chukchi Sea and 6,305 animals in the Beaufort Sea)(see Table 1). This does not mean that this is the number of ringed seals that will be ''taken'' by Level B harassment, it is simply the best estimate of the number of animals that potentially could have a behavioral modification due to the noise (for example Moulton and Lawson (2002) indicate that most pinnipeds exposed to seismic sounds lower than 170 dB do not visibly react to that sound; pinnipeds are not likely to react to seismic sounds unless they are greater than 170 dB re 1 microPa (rms)). In addition, these estimates are calculated based upon line miles of survey effort, animal density and the calculated zone of influence (ZOI). While this methodology is valid for seismic surveys that transect long distances, for bostrophodontical surveys that is, remain within a relatively small area, transiting back and forth while shooting seismic, the numbers tend to be highly inflated. As a result, NMFS believes that these exposure estimates are conservative and may actually affect much fewer animals.

Although it might be argued that the estimated number of ringed seals behaviorally harassed is not small in absolute numbers, the number of exposures is relatively small, representing approximately 5 percent of the regional stock size of that species (249,000) if each ''exposure'' at 160 dB represents an individual ringed seal that has reacted to that sound.

For beluga and bowhead whales, the estimated number of sound exposures during SOI's seismic surveys in the Arctic will be 297 beluga (63 in the Chukchi Sea, 234 in the Beaufort Sea) and 1,540 bowheads (9 in the Chukchi Sea and 1,531 in the Beaufort Sea). The Level B harassment ''take'' estimate represents less than 1 percent of the combined Beaufort and Chukchi Seas beluga stock size of 42,968 (39,258 in the Beaufort Sea; 3,710 in the Chukchi Sea), a relatively small number. For bowhead whales, this Level B harassment ''take'' estimate represents between 12 percent (based on 13,326 bowheads which assumes a 3.4 percent annual population growth rate from the 2001 estimate) and 14 percent of the Bering-Chukchi-Beaufort Seas bowhead population (based on the 2001 population estimate of 10,545 animals). While these exposure numbers represent a sizeable portion of their respective population sizes, NMFS believes that the estimated number of exposures by bowheads and belugas greatly overestimate actual takings for the following reasons: (1) The proposed seismic activities would occur early and late in the year in the Chukchi Sea when bowheads are fewer in number as they are concentrated in the Canadian Beaufort Sea at those times; (2) bowheads and belugas may be absent or widely distributed and likely occur in fairly low numbers within the seismic activity area in the Chukchi Sea; (3) seismic surveys are not authorized in the Beaufort Sea during that portion of the bowhead whale's westward migration that occurs during the subsistence harvest of bowheads; and (4) SOI will continue late-fall seismic surveys in the Chukchi Sea after most bowheads are presumed to have migrated through the area heading towards the Russian coast or Bering Straits. As a result, NMFS has determined it is very likely that even fewer numbers of bowhead whales will be taken than originally estimated (12–14 percent), thereby resulting in a smaller percentage of the stock size being exposed to SOI's activities. Therefore, NMFS believes that the number of bowhead whales that may be exposed to sounds at or greater than 160 dB re 1 microPa (rms) would be small.

Based on the fact that only small numbers of each species or stock will possibly be impacted and mitigation and monitoring measures will reduce the number of animals likely to be exposed to seismic pulses and therefore avoid injury and mortality, NMFS finds that SOI's seismic surveys in the Chukchi and Beaufort Seas will have a negligible impact on the affected marine mammal species or stocks.

Comment 6: The Commission recommends that, before issuing an IHA, NMFS conduct a more extensive analysis of the potential effects of SOI's proposed operations that considers (1) the direct effects of the proposed operations; (2) the potential or likely effects of other currently authorized and proposed oil and gas activities, climate change, and additional anthropogenic risk factors (e.g., industrial operations); and (3) possible cumulative effects of all of these activities over time.

Response: NMFS is required to base its determinations under section 101(a)(5)(D) of the MMPA on the best scientific information available. Provided NMFS can make a reasonable determination that the taking by the IHA applicant's activity will result in no more than a small number of marine mammals taken, have a negligible impact on affected marine mammal species/stocks, and will not have an unmitigable adverse impact on subsistence uses of marine mammals, the MMPA directs the Secretary to issue the IHA. There is no provision in the MMPA to delay issuance of the IHA in order to conduct additional analyses provided those determinations can be made.

In that regard, NMFS believes that MMS addressed the Commission's concerns in its 2006 Final Programmatic Environmental Assessment (Final PEA) for Arctic Ocean Seismic Activities. This Final PEA contained analyses of the above mentioned potential impacts on marine mammals by the offshore oil and gas seismic exploration. The analyses contained in that document have been updated where necessary by NMFS' 2008 Final Supplemental EA (SEA) for Arctic Seismic Surveys. That document, NMFS' 2008 SEA, and other supporting documents used the best information available for this analysis. As NMFS recognizes that there is a lack of information on certain aspects of the marine mammals in Arctic waters and the potential impacts on marine mammal species and stocks from offshore oil exploration, SOI and other offshore companies have developed and implemented a monitoring program to address data gaps.

Comment 7: The NSB states that in Shell's IHA application and NMFS's **Federal Register** notice, the level of 160 dB is emphasized. Shell estimates how many marine mammals they will take through seismic activities only at industrial sound levels down to 160 dB. There is clear evidence that bowhead whales respond to industrial sound level much lower than 160 dB (Miller *et al.*, 1999; Richardson, 2007; etc.). It is not clear why Shell and NMFS promote 160 dB and appear to ignore or de-emphasize the impact of industrial sounds a much lower levels than 160 dB. With regard to bowhead whales, ''NMFS believes that it cannot scientifically support adopting any single sound pressure level value below 160 dB.'' It appears NMFS needs ''conclusive'' evidence of harm before it will find more than a negligible impact from Shell's activity. In effect, this leads to a determination that largely ignores clear evidence that bowhead whales respond to industrial sound level much lower than 160 dB (Miller *et al.*, 1999; Richardson 2007; etc.). NMFS must consider impacts from the much quieter

(i.e. lower than 160 dB) industrial sounds in the discussion, analysis, conclusions, and decisions surrounding Shell's IHA application.

NMFS must also consider the views of the International Whaling Commission (IWC) scientific committee, which felt strongly that the lack of deflection by feeding whales in Camden Bay (during Shell seismic) likely shows that whales will tolerate and expose themselves to potentially harmful levels of sound when needing to perform a biologically vital activity, such as feeding (mating, giving birth, etc.). Requiring ''conclusive'' evidence of harm is not the standard, and a negligible impact finding influenced by such an unlawful standard will not pass muster. Overall, NMFS' determination that only ''small numbers'' of marine mammals will be affected by Shell's activities, and that only a ''negligible impact'' will occur, is not supported by science nor by anything in the IHA application or notice.

Response: NMFS considers a take to occur when there is a significant behavioral response on the part of an animal, not when there is some minor reaction to a sound such as a pinniped lifting its head in response to a sound, or a whale shortening its surface interval by a few seconds or minutes (this is different however, than the significant dive profile changes noted by beaked whales in response to some high-intensity military sonars). For bowhead whales, when these species deflect in a manner that is not detectable by MMOs, but only after computer analysis, NMFS does not believe that this results in a significant behavioral effect on the animal (although it may have a significant effect on subsistence uses of that species if that deflection is not mitigated). Discussion on potential bowhead whale impacts are addressed later in this document.

Comment 8: EarthJustice believes that the MMPA requires NMFS to find that the specified activities covered by the IHA ''will not have an unmitigable adverse impact on the availability of [marine mammal populations] for taking for subsistence uses....'' NMFS must ensure that Shell's activities do not reduce the availability of any affected population or species to a level insufficient to meet subsistence needs. Moreover, in making this determination, NMFS must factor in ongoing authorized activities that may also affect the availability of subsistence resources, and measure the effect of Shell's activities against the baseline of the effects of other activities on subsistence activities (see 54 Fed Reg. 40,338 at 40,342 (1989)).

Response: NMFS has defined unmitigable adverse impact as an impact resulting from the specified activity: (1) that is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by: (i) causing the marine mammals to abandon or avoid hunting areas; (ii) directly displacing subsistence users; or (iii) placing physical barriers between the marine mammals and the subsistence hunters; and (2) that cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met (50 CFR 216.103). NMFS has determined that, provided the mitigation and monitoring measures outlined herein and in the IHA are implemented, there will not be an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence uses. This determination is supported by having the 2008 CAA signed by all but one offshore oil company and by the AEWC and the Whaling Captains' Association members.

With respect to the cumulative impact assessment referenced in the cited **Federal Register** final rule, NMFS notes that the discussion in that document pertains to authorizations under section 101(a)(5)(A) of the MMPA, not section 101(a)(5)(D) of the MMPA. In the preamble to that joint-agency final rule, NMFS and the U.S. Fish and Wildlife Service were focusing on the potential for serious injury and mortality (as noted by the use of the word ''removal''), not simply incidental harassment. Provisions for issuing authorizations under section 101(a)(5)(D) were not promulgated until 1991 (see 61 FR 15884, April 10, 1996). NMFS addresses impacts on subsistence uses of marine mammals later in this document.

Marine Mammal Biology Concerns

Comment 9: The NSB (citing pages 23–24 in SOI's IHA application) notes that Shell and NMFS do not do an adequate job of describing the uncertainty surrounding the distribution, abundance and habitat use of marine mammals in the Chukchi Sea. There are few estimates of population size or habitat use of marine mammals. There are some data available from 15 to 20 years (or older) ago, but few recent data. This lack of recent data and uncertainty must be acknowledged by NMFS and integrated into the mitigation and monitoring measures because a great deal has changed in the Arctic environment in the past 15 to 20 years. Global warming has caused the sea ice thickness, extent and timing to decrease markedly. Changes in sea ice have likely caused substantial changes in marine mammal use of the Chukchi and Beaufort seas. For example, it is likely that an increased number of gray whales are using the Chukchi and western Beaufort seas than occurred 20 years ago. The uncertainty in the information must be considered to avoid negative impacts to marine mammal populations or the subsistence harvest of marine mammals.

Response: The uncertainty of the data was addressed in significant detail in MMS' 2006 Final PEA prepared under NEPA, and incorporated by reference in NMFS' 2008 SEA. However, as demonstrated in Table 1 later in this **Federal Register** document, even using the maximum density for gray whales, approximately 734 gray whales might be exposed to seismic sounds by SOI's activity. With a population estimate for the eastern North Pacific population of gray whales at 18,813 (Table 4–1), approximately 4 percent of the gray whale stock might be affected by a relatively short-term behavioral modification. Considering that almost 100 percent of this stock migrates through the coastal waters of the Southern California Bight twice a year, where heavy shipping, recreational boating and industrial activity traffic create a significant noise signature, without apparent long-term effect to the stock (however, some gray whales have diverted their migration offshore outside the Channel Islands to avoid this area), NMFS believes that the relatively short-term impact of seismic noise on only 4 percent of the population will have a negligible impact. NMFS notes that the mitigation and monitoring mentioned by the commenter was reviewed by the commenter and, as they did not recommend alternative mitigation or monitoring to address their concern, NMFS is unsure what measures they suggest industry undertake. However, the IHA issued to SOI requires vessel surveys to ensure that large groups of gray whales (and bowhead whales) are not being significantly impacted.

Comment 10: The NSB states that the estimated takes for beluga and gray whales are likely low. Two stocks, numbering more than 40,000 animals, of belugas migrate through the Chukchi Sea. It is likely that more than 1200 animals will be exposed to sounds greater than 160 dB. Recent satellite tracking data for gray whales (Bruce Mate, pers. comm.) suggests that perhaps half of the population uses the northern Chukchi Sea for foraging.

Depending on the location of the seismic operations, more than 734 gray whales will likely be harassed. The spotted seal estimate is also likely low. There are thousands of spotted seals that use the northern Chukchi Sea during late July and August, including offshore areas. It is likely that many more than 804 spotted seals will be harassed by Shell's seismic activities.

Response: SOI used marine mammal density information obtained in 2006 and 2007 by vessel and aerial surveys to supplement published information (e.g., Stock Assessment Reports (SARs) in order to calculate noise ''exposure'' estimates. As a result, NMFS believes that this information is the best information available. In regard to gray whales, NMFS would welcome receipt of this information once it is published.

Comment 11: EarthJustice states that NMFS has no idea of the actual population status of several of the species subject to the proposed IHA. For example, in the most recent SARs (Stock Assessment Reports) prepared pursuant to the MMPA, NMFS acknowledges it has no accurate information on the status of spotted seals, bearded seals, and ringed seals. See 2006 Alaska SAR at 42 and 43. Without this data, NMFS cannot make a rational ''negligible impact'' finding. This is particularly so given there is real reason to be concerned about the status of these populations. Such concerns were raised in a recent letter to NMFS from the Marine Mammal Commission following the Commission's 2005 annual meeting in Anchorage, Alaska. With respect to these species, the Commission cautioned against assuming a stable population. Because the status of the spotted seals, ringed seals, bearded seals and other stocks is unknown, NMFS cannot conclude that surveys which will harass untold numbers of individuals of each species will have no more than a ''negligible effect'' on the stocks.

Response: As required by the MMPA implementing regulations at 50 CFR 216.102(a), NMFS has used the best scientific information available in making its determinations required

under the MMPA. While recent stock assessments are lacking for several species of ice seals, for reasons stated elsewhere in this **Federal Register** Notice, no ice seals are expected to be killed or seriously injured as a result of SOI's seismic and shallow hazards survey work and the number of takings by Level B behavioral harassments will be small relative to the best estimate of population size. Therefore, NMFS believes that SOI's activity would not result in a decrease in population sizes of any of the ice seal species. As a result of our analysis, NMFS believes that the proposed 3D and shallow hazard surveys by SOI is not expected to have adverse impacts on ice seals.

It is expected that approximately 13,256 ringed, 592 bearded seals, 422 spotted seals and 2 ribbon seals would be affected by Level B behavioral harassment as a result of the proposed combined 3D seismic and shallow hazard and site clearance surveys in the Chukchi and Beaufort Seas. No serious injury or mortality is expected, so this activity is not expected to affect population numbers, or the ability of these species to increase in abundance. For ringed, bearded and spotted seals these takes by Level B harassments represent less than 6 percent each, of the Alaska stocks of these species. Although ribbon seals could also be taken by Level B behavioral harassment as a result of the proposed marine surveys in the Chukchi Sea, the probability of take is very low since their presence is very rare within the proposed project area.

Comment 12: The NSB states that additional information is needed about fin, minke and humpback whales. All three of these species occur in the Chukchi or Beaufort Seas. Acoustic and visual surveys in the past have documented these species. NMFS' National Marine Mammal Laboratory has been conducting surveys in the Chukchi Sea in late June/early July 2008. They have already seen a fin whale in the Chukchi Sea where the animal might be exposed to seismic sounds. Shell and NMFS must evaluate impacts to these marine mammals.

Response: SOI and NMFS recognized that humpback, fin and minke whale presence is possible in the waters off northern Alaska. As a result, SOI requested take of these species incidental to conducting offshore seismic and shallow-hazard surveys in these waters and NMFS evaluated the potential impacts of seismic operation on these species. However, the relatively few animals sighted supports SOI's estimate of the small number of animals of these species potentially affected by SOI's seismic surveys.

Comment 13: The NSB states that many of the estimates in Table 4–1 are outdated or are unreliable (i.e., estimates for belugas and all pinnipeds).

Response: The SOI IHA application provides information (including data limitations) and references for its estimates of marine mammal abundance. As the NSB has not provided information contrary to the data provided by SOI and NMFS does not have information that these estimates are not reliable, NMFS considers this data to be the best available.

Comment 14: The NSB states that the IHA application (p.15) suggests that belugas do not occur in the central Beaufort Sea during the summer. This is not accurate. Belugas are rarely seen in nearshore areas of the central Beaufort Sea in summer. However, the eastern Chukchi Sea stock uses the shelf break of the central Beaufort Sea during summer. Thus, vessel traffic or sounds propagating from Shell's activities could harass belugas during the summer.

Response: NMFS does not agree that SOI's IHA application suggests that belugas do not occur in the central Beaufort Sea in the summer. As stated in SOI's IHA application, a large portion of the Beaufort Sea seasonal population spend most of the summer in offshore waters of the eastern Beaufort Sea and Amundsen Gulf (Davis and Evans, 1982; Harwood *et al.*,1996). Belugas are rarely seen in the central Alaskan Beaufort Sea during the summer. During late summer and autumn, most belugas migrate far offshore near the pack ice front (Hazard, 1988; Clarke *et al.*, 1993; Miller *et al.*, 1998) and may select deeper slope water independent of ice cover (Moore *et al.*, 2000). Small numbers of belugas are sometimes observed near the north coast of Alaska during the westward migration in late summer and autumn (Johnson, 1979), but the main fall migration corridor of beluga whales is greater than 100 km (62 miles) north of the coast. Aerial- and vessel-based seismic monitoring programs conducted in the central Alaskan Beaufort Sea from 1996 through 2001 observed only a few beluga whales migrating along or near the coast (LGL and Greeneridge, 1996; *et al.* 1998, 1999). The vast majority of belugas seen during those projects were far offshore. However, NMFS notes that these statements do not affect the calculation of Level B incidental harassment, which are partially based on density estimates obtained by MMOs in 2006.

Comment 15: The NSB states that Shell's IHA application suggests that harbor porpoises will not occur in the areas they plan to conduct seismic surveys. This is not consistent with the information they provide in Table 6–1 (in SOI's IHA application). Harbor porpoises were the second most abundant cetacean seen during Shell's 2007 surveys in the Chukchi Sea.

Response: Table 6–1 provides a population estimate of 47,356 (CV = 0.223) (Angliss and Outlaw, 2005) for harbor porpoise in Bristol Bay in 1998–1999. There is no information available that this stock moves to the Chukchi Sea

in summer, but a portion may do so. However, NMFS does not believe that this population size is relevant for estimating potential takes in the Chukchi Sea, as SOI estimates density of a species based on sightings during non-seismic survey operations. The most commonly recorded cetacean species in 2007 in the Chukchi Sea was the gray whale (32 sightings), followed by harbor porpoise (10 sightings), bowhead whale (6 sightings), unidentified mysticete whale (6 sightings), unidentified whale (3 sightings), minke whale (3 sightings), humpback whale (2 sightings), one killer whale and one unidentified odontocete whale (Table 3.4). Harbor porpoise densities contained in SOI's 2008 IHA application were estimated from seismic industry data collected during 2006 activities in the Chukchi Sea, as 2007 data was not available at the time SOI submitted its 2007 IHA application. NMFS expects SOI will update its density and Level B harassment take levels in its 2009 IHA application.

Comment 16: The NSB states that SOI's IHA application (Pg. 18) in regard to the spotted seal is not sufficient. For example, spotted seals also haul out in Dease Inlet. Shell references a study (Johnson *et al.*, 1999) for information about how many spotted seals use the Colville River Delta. That study was not intended for specifically surveying spotted seals. These seals haul out based on tides and other environmental conditions not considered by Johnson *et al.* (1999). It is very feasible that many more seals, more than 20, use the Colville River Delta. Furthermore, based on satellite tracking data, spotted seals only use a haul out about 10 percent of the time (Lowry *et al.*, 1994). Thus, a sighting of 20 seals may actually represent about 200 animals. Shell's activities in Harrison Bay will likely expose every spotted seal that uses the Colville River haul out to loud seismic sounds. Shell should be required by NMFS to collect data on spotted seals using surveys that are specifically designed for spotted seals.

Response: NMFS does not believe that an IHA application needs to be a compendium of information on a species. NMFS and others recognize that an IHA application is only a single source of information. As noted in SOI's IHA application, a small number of spotted seal haul-outs are documented in the central Beaufort Sea near the deltas of the Colville River and, previously, the Sagavanirktok River. Historically, these sites supported as many as 400 to 600 spotted seals, but in recent times less than 20 seals have been seen at any one site (Johnson *et al.*, 1999). Previous studies from 1996 to 2001 indicate that few spotted seals (a few tens) utilize the central Alaskan Beaufort Sea (Moulton and Lawson, 2002; Treacy, 2002a, b) very few, if any, occurring in the eastern portion of the Beaufort Sea.

Moreover, in 2008, SOI is focusing its seismic and shallow hazards activities in areas significantly east of Harrison Bay. As a result, it is unlikely that this haul-out will be significantly affected. As the spotted seals from the Colville River Delta move into the area(s) of planned seismic activities, the potential Level B harassment take is calculated as they will become part of the overall density calculation discussed on page 25. NMFS addresses the suggested research on spotted seals later in this document.

Marine Mammal Impact Concerns

Comment 17: EarthJustice notes that the monitoring records from seismic surveys conducted in 2006 and 2007 establish that, despite the exclusion zones, scores of marine mammals were exposed to seismic pulses loud enough to potentially cause permanent hearing loss.

Response: First, as described previously in this document, auditory injury is unlikely to occur unless the animal was significantly closer to the seismic airguns than the distance to the 180 dB (cetaceans) or 190 dB (pinnipeds) zone. Second, NMFS believes that EarthJustice has misinterpreted the findings of the 2006 CPAI and SOI monitoring reports. When all data are considered, sighting rates are greater for all marine mammal groups during non-seismic than seismic periods. This is largely due to the high sighting rates from the chase vessel which were all considered to be unaffected by seismic activities. An overall higher sighting rate for all marine mammal groups during non-seismic periods compared to periods of seismic is expected if one presumes that marine mammals will deflect from the airgun array noise and therefore, not be within detection range from either the seismic or support vessel(s).

Comment 18: The NSB states that available data show that bowheads show avoidance at sounds much lower than 160 dB contrary to Shell's statement that bowheads will show disturbance only if they receive airgun sounds at levels ≤160 dB. How can NMFS justify using sound levels only down to 160 dB? As mentioned above, there are many data that show that bowheads react to much lower levels of industrial sounds than 160 dB. Miller *et al.* (1999) showed that bowheads were excluded from a 20–km (12.4–mi) area around active seismic operations. The approximate received sound level at this distance was approximately 120 dB. Exclusion from a 20–km (or sim;120 dB) zone around active seismic is substantial harassment. Therefore, NMFS must require that estimated takes of bowhead whales be calculated down to at least the 120–dB level.

Response: First, the best information available to date for reactions by bowhead whales to noise, such as seismic, is based on the results from the 1998 aerial survey (as supplemented by data from earlier years) as reported in Miller *et al.* (1999). In 1998, bowhead whales below the water surface at a distance of 20 km (12.4 mi) from an airgun array received pulses of about 117 135 dB re 1 microPa rms, depending upon propagation. Corresponding levels at 30 km (18.6 mi) were about 107–126 dB re 1 microParms. Miller *et al.* (1999) surmise that deflection may have begun about 35 km (21.7 mi) to the east of the seismic operations, but did not provide SPL measurements to that distance, and noted that sound propagation has not been studied as extensively eastward in the alongshore direction, as it has northward, in the offshore direction. Therefore, while this single year of data analysis indicates that bowhead whales may make minor deflections in swimming direction at a distance of 30–35 km (18.6–21.7 mi), there is no indication that the SPL where deflection first begins is at 120 dB, it could be at another SPL lower or higher than 120 dB. Miller *et al.* (1999) also note that the received levels at 20–30 km (12.4–18.6 mi) were considerably lower in 1998 than have previously been shown to elicit avoidance in bowheads exposed to seismic pulses. However, the seismic airgun array used in 1998 was larger than the ones used in 1996 and 1997. Therefore, NMFS believes that it cannot scientifically support adopting any single SPL value below 160 dB and apply it across the board for all species and in all circumstances.

Second, it should be pointed out that these minor course changes are during migration and, as indicated in MMS' 2006 Final PEA, have not been seen at other times of the year and during other activities.

Third, as we have stated previously, NMFS does not believe that minor course corrections during a migration across the Beaufort Sea rises to a level of being a significant behavioral response as explained previously. To show the contextual nature of this minor behavioral modification, recent monitoring studies of Canadian seismic operations indicate that when, not

migrating, but involved in feeding, bowhead whales do not move away from a noise source at an SPL of 160 dB. Therefore, while bowheads may avoid an area of 20 km (12.4 mi) around a noise source, when that determination requires a post-survey computer analysis to find that bowheads have made a 1 or 2 degree course change, NMFS believes that does not rise to a level of a ''take.'' NMFS therefore continues to estimate ''takings'' under the MMPA from impulse noises, such as seismic, as being at a distance of 160 dB (re 1 microPa). However, NMFS needs to point out that while this might not be a ''taking'' in the sense that there is not a significant behavioral response by the bowheads, that minor course deflection by bowheads can have a significant impact on the subsistence uses of bowheads. As a result, NMFS still requires mitigation measures to ensure that the activity does not have an unmitigable adverse impact on subsistence uses of bowheads.

Comment 19: The NSB states that it is not clear how Shell estimated how many bowheads would be taken at the 120–dB level. Sound from the seismic surveys attenuates to 160 dB at about 8 km (5 mi) and to the 120 dB level at approximately 60 km (37.3 mi) or greater. Even though the area ensonified to 120 dB is much larger than the 160 dB area, the number of takes of bowheads has only doubled. This does not make sense. Additional information is needed as to how Shell calculated how many bowheads, especially migrating bowheads, will be exposed to industrial sounds down to 120 dB.

Response: Bowhead whale exposure estimates were not calculated using the density x area method as these animals are expected to be migrating and detailed information on their migration is available allowing more precise estimates to be made for this species than for other marine mammal species in the Beaufort and Chukchi Seas. Thus, the assumption that the number of bowhead whales exposed at the 120–dB level would be proportional to the larger area exposed to that level is not correct. The number of bowheads estimated to be exposed to seismic sounds at or above 120 dB was estimated in the same manner as described in the IHA application for the 160 dB level. That is, the proportion of the bowhead population expected to pass within each depth bin during the planned 14 days of survey activity was multiplied by the proportion of each depth bin that was expected to be exposed to seismic sounds at or above 120 dB.

Comment 20: The NSB asserts that the estimated take for bowhead whales in the Beaufort Sea is also an underestimate. The ensonified zone around seismic operations, down to 120 dB, has the potential to deflect and harass perhaps the majority of bowhead whales that migrate through the Beaufort Sea. Estimating a take of only 1582 is too low. It is likely that many thousands of bowheads will be deflected from Shell's seismic operations. It is likely that many thousands of bowheads will also be deflected due to Shell's planned drilling operations in the Camden Bay of the Beaufort Sea (if it is allowed to proceed). Given these two large projects, a large percentage of the bowhead population will be harassed during the summer/autumn of 2009. The potential for population-level effects exists, especially if many bowheads miss feeding opportunities and expend more energy because they are deflected.

Response: First, please see previous responses in regard to bowhead whales not having a significant behavioral response at levels below 160 dB. Second, NMFS is required by the MMPA to make the determinations required under section 101(a)(5)(D) of the MMPA, independent of other activities. Third, SOI cancelled its 2008 drilling program in the Beaufort Sea and the IHA issued to SOI on August 19, 2008, for seismic and shallow hazard surveys will expire on August 18, 2009, prior to the fall migratory period of the Beaufort Sea bowhead whales. Fourth, in the Beaufort Sea, mitigation measures required under SOI's IHA prohibit seismic surveys from operating within areas where 12 or more bowhead or gray whales are detected or operating during the fall bowhead subsistence hunt.

In conclusion, as the NSB has not provided specific information contradicting the data and information provided by SOI, NMFS believes that the numbers of bowhead whales being exposed to seismic sounds is based on the best scientific information as provided in SOI's IHA application.

Comment 21: The NSB notes that Shell states that, ''...impacts would be temporary and short term displacement of seals and whales from within ensonified zones.'' This conclusion is not supported by data. Impacts to seals and belugas are unknown. Further, duration of impacts to bowhead whales are unknown. There are not sufficient data to evaluate the duration of impacts to marine mammals or the biological significance of these impacts. NMFS should require Shell to specifically investigate impacts from seismic to beluga whales, the duration of impacts to all marine mammals and the biological significance of these impacts.

Response: To date, there have not been any reported large scale impacts attributable to offshore oil and gas development in the Arctic. NMFS would expect that villagers who hunt and fish in the offshore waters would notice changes in marine life. In regard to study of the beluga whale, SOI's monitoring program for assessing impacts to marine mammals by offshore industry activities is developed through input from the AEWC, the NSB, and the public. The 2008 monitoring program is discussed later in this document.

Comment 22: The NSB states that SOI's IHA application indicates that Richardson *et al.* (1999) showed that bowheads returned to original migratory path shortly after being deflected because of seismic sounds. The statement is false. Richardson *et al.* (1999) were not able to investigate the duration of effects to bowhead whales from seismic sounds. One of the goals of the monitoring plan is to investigate the duration of deflection. The statement that bowheads are only deflected for a short period of time is not supported by data and should be disregarded by NMFS and decision makers in this section of Shell's application as well as other sections.

Response: NMFS agrees that the reference does not support the statement and has not been considered in making our statutory determinations.

Comment 23: The NSB states that during the period of seismic acquisition, some species may be dispersed (as claimed by Shell) while other species may not be dispersed. Bowheads will not be dispersed during migration. Belugas are not dispersed during migration, and seem to be aggregated along the shelf break during the summer. Spotted seals aggregate at haulout areas along the Chukchi and Beaufort seas coasts. Thus, the conclusion that there will be few impacts to marine mammals is not supported by data. NMFS must require extensive mitigation and monitoring of Shell if they allow Shell to incidentally take marine mammals. Shell must collect data that can be used to evaluate impacts to marine mammals. Further, NMFS must ensure that Shell is complying with mitigation measures.

Response: The statement by SOI is that ''During the period of seismic acquisition (mid-July through mid-November), most marine mammals would be dispersed throughout the area.'' The document goes on to provide species specific information (where available) to allow estimates of Level B harassment.

SOI's mitigation and monitoring program was reviewed by the public

during the public comment period on SOI's IHA application and during the Open Water Meeting held in Anchorage, AK in April, 2008. The NSB was an active participant in critiquing those plans and providing valuable information to SOI and others for improvements in its design. Finally, NMFS has no reason to believe that SOI would not carry out the mitigation and monitoring requirements stated in its IHA and in its submitted monitoring plan.

Comment 24: The NSB notes that Shell states, '' impacts would be temporary and short term displacement of seals and whales from within ensonified zones .'' This conclusion is not supported by data. Impacts to seals and belugas are unknown. Further, duration of impacts to bowhead whales are unknown. There are not sufficient data to evaluate the duration of impacts to marine mammals or the biological significance of these impacts. NMFS should require Shell to specifically investigate impacts from seismic to beluga whales, the duration of impacts to all marine mammals and the biological significance of these impacts.

Response: NMFS agrees that there is some uncertainty on the current status of some marine mammal species in the Beaufort and Chukchi Seas and on impacts on marine mammals from seismic surveys. NMFS is currently proposing to conduct new population assessments for Arctic pinniped species and current information is available on-line through its SARS program. In regard to impacts, there is no indication that seismic survey activities are having a long-term impact on marine mammals. For example, apparently, bowhead whales continued to increase in abundance during periods of intense seismic in the Chukchi Sea in the 1980s (Raftery *et al.*, 1995; Angliss and Outlaw, 2007), even without implementation of current mitigation requirements. As a result, NMFS believes that seismic survey noise in the Arctic will have no more than a short-term effect on marine mammals in the Beaufort and Chukchi Seas.

In regards to impacts on beluga whales, impact assessments on marine mammal species from offshore seismic activities have been ongoing since 2006 through the industry's 4MP. NMFS along with the AEWC, the NSB, oil exploration companies and others have developed an off-seismic vessel monitoring program to help address the potential impact of seismic activities on marine mammals and subsistence uses of marine mammals. This program is described later in this document (see Joint Industry Studies Program). If the NSB wishes to s*et al.*ernative priorities for this impact assessment program, it should make that concern known to NMFS and SOI as soon as possible.

Comment 25: The NSB states that NMFS refers to Shell's estimates as being inflated due to accounting for multiple exposures to one animal. While this may show inflation in the number of the animals affected, it understates the number of animals that may suffer more prolonged or serious injury due to multiple exposures to anthropogenic sounds. NMFS recognizes that for pinnipeds, exposure to several seismic pulses may cause temporary threshold shift (TTS) (temporary hearing loss) at somewhat lower received levels than would be required for a single seismic pulse to cause TTS. Relationships between TTS and PTS (permanent threshold shift) have not been studied in marine mammals, but repeated exposure to seismic pulses may result in hearing damage that could lead to PTS. NMFS has previously recognized that permanent hearing loss (also known as PTS) is considered a serious injury to marine mammals, and has explained that ''if [an] acoustic source at its maximum level had the potential to cause PTS in a marine mammal's hearing ability, that activity would be considered capable of causing serious injury to a marine mammal and would therefore not be appropriate for an incidental harassment authorization.'' If NMFS argues that take estimates are inflated due to accounting for multiple exposures, NMFS must also examine the possibility that those multiple exposures will cause PTS in marine mammals. If this is a possibility, an IHA cannot be issued.

Response: As explained in detail elsewhere in this **Federal Register** notice, marine mammals will need to be significantly closer to the seismic source and be exposed to sound pressure levels greater than 180 dB to be injured or killed by the seismic airgun array. For large airgun arrays, this distance may be within 200 m (656 ft) of the vessel. In order for a marine mammal to receive multiple exposures (and thereby incur PTS), the animal would (1) need to be close to the vessel and not detected during that period of multiple exposure, (2) be swimming in approximately the same direction and speed as the vessel, and (3) not be deflected away from the vessel as a result of the noise from the seismic array. Preliminary model simulations for seismic surveys in the Gulf of Mexico, indicate that marine mammals are unlikely to incur single or multiple exposure levels that could result in PTS, as the seismic vessel would be moving at about 4–5 knots, while the marine mammals would not likely be moving within the zone of potential auditory injury in the same direction and speed as the vessel, especially for those marine mammals that take measures to avoid areas of seismic noise. .

Comment 26: EarthJustice states that they referenced the scientific literature linking seismic surveys with marine mammal stranding events in its comments to MMS on the Draft PEA. NMFS' failure to address these studies, and the threat of serious injury or mortality to marine mammals from seismic surveys renders NMFS' conclusionary determination that serious injury or morality will not occur from SOI's activities arbitrary and capricious.

Response: The MMS briefly addressed the humpback whale stranding in Brazil on page 127 in the Final PEA. Marine mammal strandings are also discussed in the NMFS/MMS Draft PEIS. Detailed response to the cited strandings have been provided in several previous IHA issuances for seismic surveys (see for example: 69 FR 74905 (December 14, 2004), 71 FR 49418 (August 23, 2006), 71 FR 50027 (August 24, 2006), 73 FR 45969 (August 7, 2008), and 73 FR 46774 (August 11, 2008). The statement here by EarthJustice simply repeats the information it has provided in the past regarding these strandings to which NMFS has responded (as here). As NMFS has stated, the evidence linking marine mammal strandings and seismic surveys remains tenuous at best. Two papers, Taylor *et al.* (2004) and Engel *et al.* (2004) reference seismic signals as a possible cause for a marine mammal stranding. Taylor *et al.* (2004) noted two beaked whale stranding incidents related to seismic surveys. The statement in Taylor *et al.* (2004) was that the seismic vessel was firing its airguns at 1300 hrs on September 24, 2004, and that between 1400 and 1600 hrs, local fishermen found live stranded beaked whales some 22 km (12 nm) from the ship's location. A review of the vessel's trackline indicated that the closest approach of the seismic vessel and the beaked whales stranding location was 18 nm (33 km) at 1430 hrs. At 1300 hrs, the seismic vessel was located 25 nm (46 km) from the stranding location. What is unknown is the location of the beaked whales prior to the stranding in relation to the seismic vessel, but the close timing of events indicates that the distance was not less than 18 nm (33 km). No physical evidence for a link between the seismic survey and the stranding was obtained. In addition, Taylor *et al.*

(2004) indicates that the same seismic vessel was operating 500 km (270 nm) from the site of the Galapagos Island stranding in 2000. Whether the 2004 seismic survey caused to beaked whales to strand is a matter of considerable debate (see Cox *et al.*, 2004). However, these incidents do point to the need to look for such effects during future seismic surveys. To date, follow up observations on several scientific seismic survey cruises have not indicated any beaked whale stranding incidents.

Engel *et al.* (2004), in a paper presented to the International Whaling Commission (IWC) in 2004 (SC/56/E28), mentioned a possible link between oil and gas seismic activities and the stranding of 8 humpback whales (7 off the Bahia or Espirito Santo States and 1 off Rio de Janeiro, Brazil). Concerns about the relationship between this stranding event and seismic activity were raised by the International Association of Geophysical Contractors (IAGC). The IAGC (2004) argues that not enough evidence is presented in Engel *et al.* (2004) to assess whether or not the relatively high proportion of adult strandings in 2002 is anomalous. The IAGC contends that the data do not establish a clear record of what might be a ''natural'' adult stranding rate, nor is any attempt made to characterize other natural factors that may influence strandings. As stated previously, NMFS remains concerned that the Engel *et al.* (2004) article appears to compare stranding rates made by opportunistic sightings in the past with organized aerial surveys beginning in 2001. If so, then the data are suspect.

Second, marine mammal strandings do not appear to be related to seismic survey work the Arctic Ocean. Moreover, NMFS notes that in the Beaufort Sea, aerial surveys have been conducted by MMS and industry during periods of industrial activity (and by MMS during times with no activity). No strandings or marine mammals in distress have been observed during these surveys, that appear to be related to seismic survey activity, and none have been reported by NSB inhabitants (although dead marine mammals are occasionally sighted). Finally, if bowhead and gray whales react to sounds at very low levels by making minor course corrections to avoid seismic noise and mitigation measures require Shell to ramp-up the seismic array to avoid a startle effect, strandings, similar to what was observed in the Bahamas in 2000, are unlikely to occur in the Arctic Ocean. In conclusion, NMFS does not expect any marine mammals will incur serious injury or mortality as a result of Arctic Ocean seismic surveys in 2008/2009.

Comment 27: EarthJustice mentions a recent stranding of a large number of melon-headed whales in an area off Madagascar where seismic surveys were being conducted.

Response: Information available to NMFS at this time indicates that the seismic airguns were not active around the time of the stranding. Scientists continue to investigate this stranding and a determination of cause is expected early in 2009.

Comment 28: EarthJustice states that NMFS's assertion that there is no evidence that marine mammal strandings in the Arctic that are related to seismic surveys only reflects the fact that efforts have not been made to determine the cause of such strandings.

Response: NMFS maintains a nationwide marine mammal stranding database. While a small number of Arctic marine mammal species may have stranded within various parts of their range, there are no records of strandings in the northern Chukchi and Beaufort Seas attributable to offshore seismic and/or shallow hazard surveys.

Comment 29: The NSB states that while Shell's IHA application and NMFS' **Federal Register** notice mention the various transit routes through U.S. waters in the Bering, Chukchi and Beaufort Seas that the numerous vessels associated with Shell's seismic surveys will take, there is no discussion nor analysis of the take that will occur from these vessels along the way. Shell needs to adequately specify the activities and impacts of these vessels.

Response: The specified activity that has been proposed and for which an IHA has been requested is the use of seismic airguns to conduct oil and gas exploration. While the support vessels play a role in facilitating seismic operations, NMFS does not expect these operations to result in the incidental take of marine mammals. NMFS believes that normal shipping and transit operations do not rise to a level requiring an authorization under the MMPA, unless they are conducting an activity that has noise levels significantly greater than normal shipping, such as towing oil rigs or heavy ice breaking, or operations during the spring or fall bowhead subsistence whaling season. To require IHAs for standard shipping would require NMFS to seek IHA applications from activities, such as barge companies supplying North Slope villages and shoreside facilities. This would also potentially affect NMFS' ability to review activities that have a potential to cause harm to marine mammal species or population stocks.

Fish and Zooplankton Concerns

Comment 30: The NSB is concerned about the potential impacts of SOI's seismic survey to the food sources of marine mammals (fish and zooplankton). Additional information is needed about impacts from seismic surveys to marine mammal prey and the resulting impacts to the marine mammals themselves. The NSB recommends an effort be made to monitor potential fish death behind the seismic boat by using some type of net to sample for these casualties.

Response: NMFS does not expect the proposed action to have a substantial impact on biodiversity or ecosystem function within the affected area. The potential for the SOI's activity to affect ecosystem features and biodiversity components, including fish and invertebrates, is fully analyzed in MMS'2006 Final PEA and incorporated by reference into the NMFS' 2008 SEA. MMS/NMFS' evaluation in the 2006 Final PEA indicates that any direct, indirect, or cumulative effects of the action would not result in a substantial impact on biodiversity or ecosystem function. In particular, the potential for effects to these resources are considered in the Final PEA with regard to the potential effects on biological diversity and ecosystem functions in the Beaufort and Chukchi Seas that may serve as essential components of marine mammal habitat. Most of the potential effects on marine mammal food sources (fish and invertebrates) are considered to be short term and unlikely to rise to a level that may affect normal ecosystem function or predator/prey relationships; therefore, NMFS believes that there will not be a substantial impact on marine life biodiversity or on the normal function of the nearshore or offshore Beaufort Sea ecosystems.

During the seismic survey, only a small fraction of the available habitat would be ensonified at any given time. Disturbance to fish species would be short term, and fish would return to their pre-disturbance behavior once the seismic activity in a specific area ceases. Thus, the proposed survey would have little, if any, impact on the ability of marine mammals to feed in the area where seismic work is conducted.

Some mysticetes, including bowhead whales, feed on concentrations of zooplankton. Some feeding bowhead whales may occur in the Alaskan Beaufort Sea in July and August, and others feed intermittently during their westward migration in September and October (Richardson and Thomson

[eds.], 2002; Lowry *et al.*, 2004). A reaction by zooplankton to a seismic impulse would only be relevant to whales if it caused concentrations of zooplankton to scatter. Pressure changes of sufficient magnitude to cause that type of reaction would probably occur only very close to the acoustic source, if any would occur at all. Impacts on zooplankton behavior are predicted to be negligible, and that would translate into negligible impacts on availability of mysticete prey. Therefore, no impacts to mysticete feeding are anticipated.

Little mortality to fish and/or invertebrates is anticipated. The proposed Chukchi and Beaufort seas seismic survey are predicted to have negligible to low physical effects on the various life stages of fish and invertebrates. Though these effects do not require authorization under an IHA, the effects on these features were considered by NMFS with respect to consideration of effects to marine mammals and their habitats, and NMFS finds that these effects from the survey itself on fish and invertebrates are not anticipated to have a substantial effect on biodiversity and/or ecosystem function within the survey area.

Subsistence Concerns

Comment 31: The Commission recommends that the issuance of the requested IHA be contingent upon NMFS establishing specific mitigation measures for bowhead and beluga whales that will ensure that the proposed activities do not affect the subject species in ways that will make them less available to subsistence hunters. Such measures should reflect the provisions of any CAA as well as meeting the requirements of the MMPA.

Response: NMFS has required SOI, through the IHA, to implement mitigation measures for conducting seismic surveys that are designed to avoid, to the greatest extent practicable, impacts on coastal marine mammals and thereby, meet the needs of those subsistence communities that depend upon these mammals for sustenance and cultural cohesiveness. For the 2008 season, these mitigation measures are similar to those contained in the CAA signed by SOI on July 21, 2008 (and subsequently amended by SOI and the AEWC), and include a prohibition on shooting seismic before July 20, 2008, in the Chukchi Sea; black out areas during the subsistence hunt for bowhead whales; coastal stand-off distances for seismic and vessel transiting activities; coastal community communication stations; and emergency assistance to whalers, among other measures.

Comment 32: The AEWC notes that SOI signed the 2008 CAA on July 21, 2008, with minor modifications set forth in the addendum to the CAA. To help mitigate the impacts of offshore geophysical operations on marine mammals and subsistence hunting, the whaling captains of the AEWC have agreed to an understanding and put into the CAA that only two geophysical operations will occur at any one time in either the Beaufort or the Chukchi Seas. The industry participants conducting geophysical operations agree to coordinate the timing and location of such operations so as to reduce, by the greatest extent reasonably possible, the level of noise energy entering the water from such operations at any given time and at any given location. The AEWC points out that this does not limit the number of geophysical operations that may be permitted, planned or conducted in a single season, only on the number of active geophysical operations being conducted simultaneously.

Response: While NMFS agrees that limiting the number of geophysical operations in either the Chukchi or Beaufort Seas would reduce impacts on marine mammals, this condition is unnecessary for a determination on whether there will be an unmitigable adverse impact on subsistence uses of marine mammals because SOI's geophysical operations will not occur during the spring and fall bowhead whale subsistence hunt, and additional mitigation measures have been imposed to ensure that coastal subsistence hunters are not affected.

NMFS understands that, under the terms of an OCS lease, the lessee is required to make progress on exploration and development on its leases in order to hold that lease beyond the initial lease term. Ancillary activities (such as seismic and shallow hazard surveys) are those activities conducted on a lease site to obtain data and information to meet MMS' regulations to explore and develop a lease. If a limit is placed by NMFS on the number of ancillary activities authorized for a planning area in a given year, NMFS may preclude the lessee from complying with MMS regulations to proceed in a timely manner on exploring or developing its OCS leases. Therefore, based on both practicability and that it is not necessary, NMFS has not adopted this suggested mitigation measure. However, NMFS encourages industry participants to work together to reduce seismic sounds in the Arctic Ocean through cooperative programs in data collection to reduce impacts on marine mammals.

Comment 33: In light of increasing offshore oil and gas production (and exploration), the AEWC believes it is in the interest of all stakeholders for our federal government, especially NMFS, to continue to support the CAA process and its reliance on the AEWC's leadership in promoting sound management of offshore oil and gas development.

Response: NMFS believes that the CAA is a means to ensure that there is not an unmitigable adverse impact on the availability of species or stocks of marine mammals for taking for subsistence uses. However, the CAA is a document entered into between two entities (industry applicants and native community stakeholders). NMFS is neither a signatory to the CAA, nor does it play any formal role in the development of the CAA other than by requiring industry applicants to develop a Plan of Cooperation (POC) pursuant to 50 CFR 216.104(a)(12). Although NMFS has a limited role in this process, NMFS supports the continuation of the CAA process to help ensure that native subsistence harvests are successful.

Comment 34: EarthJustice notes that NMFS fails to provide any meaningful assessment of the effectiveness of the vaguely identified mitigation measures. It does not appear that NMFS has made any effort to discern whether seismic surveying activities in the Chukchi or Beaufort Seas in 2006 or 2007 had an adverse impact on the availability of seal and whale species for subsistence uses. Before authorizing another year of surveys, NMFS must at least evaluate the effect of recent surveys, assess the effectiveness of mitigation measures used during those surveys, and make the results of such assessment available to the affected public.

Response: The MMPA does not prohibit an activity from having an adverse impact on the availability of marine mammals for subsistence uses; rather, the MMPA requires NMFS to ensure the activity does not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence uses. NMFS provided the definition for ''unmitigable adverse impact'' previously in this **Federal Register** document.

Second, specific mitigation measures contained in the 2008 CAA relevant to mitigating impacts on subsistence hunting of marine mammals are required to be implemented, including a prohibition on vessel transits prior to July 1st, a prohibition on conducting seismic surveys in the Chukchi Sea prior to July 20th, an agreement by vessel operators for vessel transits to remain as far offshore as safe transit

allows; not creating new leads that might attract bowhead or beluga whales away from subsistence communities, blackout periods in the Beaufort and Chukchi Seas and coastal standoff distances for survey vessels and for transiting vessels to avoid impact potential subsistence harvests of coastal marine mammals. NMFS believes that implementation of all of these measure ensures that SOI's seismic survey program will not have an unmitigable adverse impact on subsistence uses of marine mammals. However, it should be recognized that mitigation measures designed to reduce impacts on subsistence uses of marine mammals are not quantifiable as no seismic survey activity occurs during these periods. As a result, NMFS must use alternative methods for assessing effectiveness. One way is to review annual marine mammal harvests and determine effectiveness.

A second measure is more timely and that is through SOI's Com-Centers established to ensure conflicts are at the lowest level practicable. NMFS notes that it has not received any direct communication, either during the public review period on the issuance of IHAs for 2008, through the Com Centers established to address subsistence use concerns, or independently from subsistence hunters, that document any significant impact that could potentially relate to SOI's 2006, 2007, or 2008 seismic program.

Comment 35: EarthJustice states that NMFS has not analyzed the impacts of SOI's surveying activity against the background of the many seismic surveys planned for the Chukchi and Beaufort Seas in the summer of 2008, l*et al.*ne provided adequate mitigation of the effects of this activity on subsistence activities.

Response: Potential cumulative impacts on subsistence uses of marine mammals have been addressed in MMS' 2006 PEA and NMFS' 2008 SEA. The 2006 PEA addressed the potential impacts from 4 seismic survey activities in the Beaufort Sea and 4 seismic survey activities operating at the same time. The activity level in 2008 is less than the level analyzed in the 2006 PEA. As a result, NMFS believes that by requiring all participants in seismic/shallow hazard surveys in 2008 in the Chukchi and Beaufort Seas to conduct appropriate mitigation measures, such as vessel standoff distances from shore, limiting startup dates for seismic, and blackout areas during the bowhead whale subsistence hunt, NMFS believes that there will not be a unmitigable adverse impact on subsistence uses of marine mammals in 2008 by oil and gas surveys.

Comment 36: EarthJustice notes that SOI proposes to mitigate impacts to subsistence activities via measures developed through a POC with the AEWC and a variety of meetings and consultations. There is no guarantee that these processes will result in enforceable limits that ensure SOI's activities will not have an unmitigable adverse impact on the availability of marine mammals for taking for subsistence purposes. As a result, NMFS has deferred its MMPA determination until after such a POC has been developed. The NSB notes that POC meetings consist of companies telling NSB communities what oil and gas activities will occur in the Beaufort and Chukchi Seas. There is little opportunity for detailed and meaningful dialogue and the POC is not appropriate for negotiating means to avoid conflicts between company activities and subsistence hunts.

Response: First, it should be understood that the POC is not the same document as the CAA. While these are two different documents, the POC meetings will likely aide in developing the CAA. It should also be understood that the POC is required by NMFS regulations to be submitted as part of the industry's IHA application; so it is logical that NMFS' MMPA determinations would be made after submission of the POC. The POC is required by NMFS regulations in order to bring industry and the village residents together to discuss planned offshore activities and to identify potential problems. To be effective, NMFS and SOI believe the POC must be a dynamic document which will expand to incorporate the communications and consultation that will continue to occur throughout 2008. Outcomes of POC meetings are included in quarterly updates attached to the POC and distributed to Federal, state, and local agencies as well as local stakeholder groups.

In its Interim Rule for Arctic Activities (61 FR 1588, April 10, 1996), NMFS clarified that if either a POC or information required by 50 CFR 216.104(a)(12) is not submitted, and, if during the comment period, evidence is provided indicating that an adverse impact to subsistence needs will result from the activity, an authorization may be delayed in order to resolve this disagreement. The requirements for meeting this requirement are clearly stated in 50 CFR 216.104(12).

In any event, SOI and the AEWC and Whaling Captains Associations signed a CAA in July 2008, which contains measures agreed to by the parties. Many of these subsistence-related measures (as they pertain to marine mammals and the related subsistence harvests) have been included in the IHA and are enforceable.

Comment 37: EarthJustice claims that NMFS has failed its basic duty under the MMPA and its own regulations to make a proposed determination available to the public to scrutinize and comment on. Absent specification of the restrictions and mitigation measures that will result from these processes, NMFS cannot reasonably conclude that they will be effective, which it must in order to determine that they will eliminate the potential for substantial impacts to subsistence activities.

Response: NMFS does not agree with the statement. NMFS published a notice of receipt of SOI's IHA application for conducting seismic and shallow hazard surveys in the Chukchi and Beaufort Seas in 2008/2009 on June 25, 2008 (73 FR 36044) and provided a 30–day public comment period on that application and NMFS' preliminary determinations that the proposed action would result in taking by harassment of small numbers of marine mammals of a species or population stock; (2) the harassment would have a negligible impact on affected marine mammal species or stocks; and (3) the harassment would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence uses. The preliminary determination in regard to subsistence uses of marine mammals was provided in this document, including statements on mitigation measures likely to be required to ensure that there will not be an unmitigable adverse impact on the availability of marine mammals for taking for subsistence uses, including dates of seismic operation to avoid spring and fall bowhead hunts and the application of procedures established in a CAA between the seismic operators and the AEWC and the Whaling Captains' Associations of Kaktovik, Nuiqsut, Barrow, Pt. Hope and Wainwright. The IHA application (and **Federal Register** notice) clearly noted that the times and locations of seismic and other noise producing sources are likely to be curtailed during times of active bowhead whale scouting and actual whaling activities within the traditional subsistence hunting areas of the potentially affected communities. Unless NMFS believes that the measures recommended by the applicant are insufficient to result in an unmitigable adverse impact to subsistence uses of marine mammals, it is not necessary to add additional mitigation measures.

Additional practicable mitigation measures can be added at the IHA stage either through comment on the proposed IHA notice, negotiations between industry and the communities, or final review by NMFS of its preliminary determination. There is no requirement in the MMPA to have its final determination, including mitigation measures subject to additional public review.

Comment 38: EarthJustice states that ''Pursuant to the MMPA an IHA must prescribe ''means of effecting the least practicable impact . . . on the availability of [an affected species or stock] for subsistence uses . . . .'' NMFS fails to set forth its determination that the mitigation measures identified in the **Federal Register** notice will ensure the least practicable adverse impact on the availability of marine mammals to subsistence users. Because NMFS has failed to impose several practicable mitigation measures that would reduce potential impacts on the availability of marine mammals for subsistence uses, the agency has failed to satisfy the ''stringent standard'' imposed by Congress in the MMPA.

Response: EarthJustice's citation was taken out of context. The complete statement reads: ''The authorization for such activity shall prescribe, where applicable–

(I)permissible methods of taking by harassment pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for subsistence uses pursuant to subsection (b) of this section or section 1379 (f) of this title or pursuant to a cooperative agreement under section 1388 of this title.''

In regards to reducing potential impacts on the availability of marine mammals for subsistence purposes, NMFS believes that the mitigation measures described in the **Federal Register** notice on SOI's IHA application, discussed previously in this document, and analyzed elsewhere in this **Federal Register** document meet the intent of this paragraph of the MMPA.

Comment 39: EarthJustice states that NMFS has failed to impose mitigation measures that would reduce potential disturbance and biological impacts to essential subsistence resources such as bowhead whales, seals and beluga whales. For example, NMFS has failed to impose a mandatory 120–dB bowhead cow/calf pair monitoring zone for all of Shell's activities. NMFS should require such monitoring, at the least. NMFS can and should impose a safety zone for bowhead cow-calf pairs exposed to 107 dB or more. Similar measures should be taken with respect to beluga whales, which are also sensitive to sound over great distances, and can be found in large groups at certain times.

Response: Section 101(a)(5)(D)(ii) states that: ''The authorization for such activity shall prescribe, where applicable–(I) permissible methods of taking by harassment pursuant to such activity, and other means of effecting the least practicable impact on such species or stock... .'' As discussed elsewhere in this **Federal Register** document, implementation of mitigation measures (e.g., shutdowns) such as to 107 dB for bowhead cow/calf pairs, 120 dB for bowhead cow/calf pairs and beluga whales, and to an unstated dB level for seals, are neither practicable nor warranted. Safety zones to 107 dB would extend significant distances with little ability to monitor effectively without a fleet of aircraft and practical only when within safe flight distances from shore in the Beaufort Sea. Aircraft safety factors also prevent the use of aircraft in offshore waters of the Chukchi Sea where weather may prevent an aircraft from returning safely to land. Also, distances north of seismic vessel operations could not be observed without significant modifications to currently available aircraft due to flight (fuel) limitations and other safety factors that must be considered.

Second, please see response to comment 18 previously in this document in regards to shutdowns for bowhead whale cow/calf paris within the 120–dB zone. As indicated in that response, while a single year of data analysis indicates that bowhead whales may make minor deflections in swimming direction at a distance of 30–35 km (18.6–21.7 mi), there is no indication that the SPL where deflection first begins is at 120 dB, it could be at another SPL lower or higher than 120 dB. As a result, NMFS believes that it cannot scientifically support adopting any single SPL value below 160 dB and apply it across the board for all species and in all circumstances.

Comment 40: EarthJustice states that another practicable mitigation measure that NMFS fails to discuss, l*et al*.ne impose, is a mandatory limit on the number of concurrent seismic and/or shallow hazard surveys in the Chukchi and Beaufort Seas. At all times, but especially during the fall bowhead migration, NMFS should prohibit the simultaneous operations of multiple vessels within the Chukchi and Beaufort Seas. Moreover, it should require that no two vessels operate within 100 km (62 mi) of one another. Given the large size of the 120–dB zone, closer simultaneous operation would pose a real risk of disrupting the bowhead whale migration and the behaviors of beluga and gray whales.

Response: EarthJustice has not provided NMFS with any data to support its argument that multiple seismic vessels should not be permitted in the Beaufort and Chukchi Seas or that no more than 2 vessels be allowed to operate within 100 km (62 mi) of one another. In regard to limiting seismic and shallow hazard vessels to no more than 2 vessels, please see response to comment 32. In regard to a 100–km (62–mi) vessel separation distance, NMFS believes that the 100–km separation distance for the 120–dB zone between vessels is not scientifically supportable. The distance where the received level reaches 120 dB re 1 microPa is dependent upon the source level and oceanographic conditions. For the same oceanographic conditions, the higher the source level, the longer the distance where the received level would reach 120 dB. Therefore, at this time, there is no basis upon which to limit effort to no more than 2 vessels within 100 km (62 mi) of one another.

Finally, the MMS 2006 Final PEA, which NMFS adopted in 2006 and incorporated into its 2008 SEA, provided a thorough analysis on the maximum number of eight seismic activities that could occur in the Chukchi and Beaufort Seas. The analysis lead NMFS and MMS to conclude that up to a maximum of eight seismic surveys would not result in significant impacts to the quality of the human environment. In addition, NMFS' 2008 SEA, which analyzed the effect of multiple seismic surveys also lead NMFS to conclude that the SOI survey would not result in a significant impacts.

Comment 41: The NSB asks how will SOI not impact the summer, open-water beluga hunt in Wainwright and protect the subsistence hunts of other marine mammals in the Chukchi Sea?

Response: Wainwright residents hunt beluga whales in the spring and early summer. While bowhead and beluga whale hunting is likely to have concluded by the time that seismic operations begin, NMFS recognizes that seismic noise and vessel traffic disturbance could have effects on this harvest. As a result, the IHA (and the CAA) contain time restrictions and coastal standoff distances for transiting vessels to avoid an unmitigable adverse impact on coastal subsistence hunts for marine mammals.

Cumulative Impact Concerns

Comment 42: The NSB states that, cumulative impacts are largely ignored by the SOI IHA action, even though SOI's proposal is only one of numerous oil industry activities recently occurring, planned or on-going in the U.S. portion of the Chukchi and Beaufort Seas. As stated previously, the cumulative impacts of all industrial activities must be factored into any negligible impact determination. NMFS has not done so for 2008, and, therefore, the proposed IHA should not be issued until a cumulative impact assessment is conducted.

Response: Section 101(a)(5)(D) of the MMPA requires NMFS to make a determination that the taking by the activity is taking small numbers of marine mammals, has a negligible impact on marine mammals, and does not result in an unmitigable adverse impact on the subsistence uses of those species and stocks. The MMPA does not instruct NMFS to make these determinations by taking into account other events (subsistence hunting, Arctic warming, and other human activities) or over time periods more than a year, if a request for take has been made under section 101(a)(5)(D) of the MMPA. Cumulative impact assessments have been addressed by MMS (and NMFS) in the 2006 Final PEA and NMFS in its 2007 and 2008 Supplemental EAs. Because these documents are part of NMFS' Administrative Record on this matter, the information contained within them do not need to be repeated. Please refer to these documents for that assessment.

The proposed monitoring plans were provided to the NSB and others for review and comment in October, 2007 and during the public review period for SOI's proposed IHA application. SOI's monitoring plans were also reviewed at the April, 2008 Open Water Meeting in Anchorage, AK. A critical component of those reviews was to ensure that the monitoring plans address the issue of cumulative impacts.

Mitigation and Monitoring Concerns

Comment 43: EarthJustice contends that the MMPA authorizes NMFS to issue a small take authorization only if it can first find that it has required adequate monitoring of such taking and all methods and means of ensuring the least practicable impact have been adopted. The proposed IHA largely ignores this statutory requirement. While the proposed IHA lists various monitoring measures, it contains virtually nothing by way of mitigation measures. The specific deficiencies of the ''standard'' MMS mitigation measures as outlined in the 2006 PEA are described in detail in our NEPA comments. The problems with the mitigation measures as explained for NEPA purposes are even more compelling with regard to the substantive standards of the MMPA. Because the MMPA explicitly requires that ''means effecting the least practicable impact'' on a species, stock or habitat be included, an IHA must explain why measures that would reduce the impact on a species were not chosen. Neither the proposed IHA, Shell's application, the 2006 PEA, nor the 2007 DPEIS attempt to do this.

Response: In the proposed IHA notice, NMFS describes those mitigation measures that SOI proposed to implement in 2008/2009. There is no requirement for NMFS to propose additional mitigation measures at that time as long as NMFS can make its preliminary determinations required under the MMPA that the taking will (1) have no more than a negligible impact on affected species and stocks of marine mammals; (2) be small relative to the stock or population size; and (3) not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence uses. It is only at the time that it has completed its review of SOI's proposed activity (which may have been modified since the time of the application), the comments received during the public comment period, and any recent information on the activity, potential impacts on affected marine mammal stocks, and/or subsistence uses of marine mammals, that it will determine what mitigation measures are practicable to ensure that impacts are at the lowest level practicable. NMFS has conducted that review and analysis in this **Federal Register** document and has analyzes a variety of mitigation and monitoring measures in its 2008 SEA.

Comment 44: EarthJustice notes that while NMFS has not performed any analysis of why additional mitigation measures are not ''practicable,'' the proposed IHA contains information to suggest that many such measures are in fact practicable. For example, in 2006 NMFS required monitoring of a 120–dB safety zone for bowhead cow/calf pairs and large groups >12 individuals). The IHA and **Federal Register** notice are somewhat ambiguous as to whether the 120–dB safety zone will be required in the Chukchi Sea. NMFS should require Shell to employ the 120–dB safety zone for all operations in both oceans, including shallow hazard and ice gouge surveys in the Beaufort Sea, to ensure the least practicable adverse impact on marine mammals.

Response: In its final determination and the IHA issued to SOI, NMFS required SOI to establish a 160–dB safety zone whenever an aggregation of 12 or more bowhead whales or gray whales are observed, whether in the Chukchi or Beaufort Seas. If an aggregation of 12 or more bowhead or gray whales is observed within the 160–dB safety zone around the seismic activity, the seismic and shallow hazard operations will not commence, or will shut-down, until surveys indicate they are no longer present within the 160–dB safety zone of seismic-surveying operations. In addition, the IHA issued to SOI established a 120–dB seismic shut-down zone whenever 4 or more migrating bowhead whale cow/calf pairs are within that safety zone in the Beaufort Sea. Seismic and shallow-hazard surveys cannot resume until two aerial surveys indicate that there are 3 or fewer migrating bowhead whale cow/calf pairs within that safety zone.

However, NMFS has not imposed a requirement to conduct aerial monitoring of the 120–dB safety zone for the occurrence of four ore more cow-calf pairs in the Chukchi Sea because it is not practicable. First, NMFS determined that monitoring the 120–dB safety zone was not necessary in the Chukchi Sea because there would not be the level of effort by 3D seismic survey operations found in 2006. This provides cow/calf pairs with sufficient ability to move around the seismic source without significant effort. Second, aerial surveys are not required in the Chukchi Sea because they have currently been determined to be impracticable due to lack of adequate landing facilities, the prevalence of fog and other inclement weather in that area, potentially resulting in an inability to return to the airport of origin, thereby resulting in safety concerns.

Comment 45: EarthJustice states that because the 120–dB safety zone is possible for aggregations of bowheads, means that such a zone is also possible for other marine mammals, such as belugas which are also subject to disturbance at similar levels. The failure to require such, or at least analyze it, violates the MMPA.

Response: Implementing a safety/shutdown zone for marine mammal species, other than migrating bowhead whale cow/calf aggregations, is neither practicable, necessary, nor warranted. NMFS notes that EarthJustice has not provided information that it is necessary to implement such a mitigation measure. First, as noted elsewhere in this **Federal Register** document, the best

scientific information available indicates that the marine mammal species found in these waters will not have a significant behavioral response at SPLs as low as 120 dB (including non-migratory bowhead whales). Second, implementing a shutdown requirement at 120–dB for all marine mammal species would significantly reduce the ability of SOI to conduct seismic surveys without significant, and costly delays. This could result in SOI needing multiple years to acquire the data necessary for exploratory drilling. Third, for reasons discussed elsewhere in this **Federal Register** notice, a 120–dB safety zone has not been implemented for the Chukchi Sea for safety reasons. As a result, NMFS does not believe that implementing a shutdown requirement for all marine mammal species at 120 dB is warranted.

Comment 46: EarthJustice believes that, because it is practicable, NMFS should also require Shell to suspend operations if BWASP (Bowhead Whale Aerial Survey Project) aerial surveys detect the requisite number of whales. In 2007, the BWASP surveys appear to have been more effective than Shell's surveys at detecting mother-calf pairs.

Response: At this time, sightings from BWASP aerial surveys are posted within 1–2 days of the conclusion of each survey at *http://www.afsc.noaa.gov/nmml/cetacean/bwasp/index.php* and, therefore, while they are available for managers, the oil/gas industry, and the interested public on a near-real-time basis, it is not possible at this time to determine that this information is useable for mitigation purposes. Moreover, involving the BWASP project more directly in providing information on the numbers of cow/calf pairs within a certain distance of seismic activity is problematic at this time because the location of the seismic activity - and thus the 120–dB zone around the vessel - is often unknown to the BWASP aerial survey team. At other times the vessel location is considered proprietary and, therefore, not available for this purpose.

Comment 47: EarthJustice and NSB note that with regard to night time and poor visibility conditions, Shell proposes essentially no limitations on operations, even though they acknowledge that the likelihood of observers seeing marine mammals in such conditions is low. The obvious solution, not analyzed by Shell or NMFS, is to simply prohibit seismic surveying when conditions prevent observers for detecting all marine mammals in the safety zone.

Response: NMFS is required by section 101(a)(5)(D)of the MMPA to reduce impacts to the lowest level practicable. Elsewhere in this **Federal Register** notice, NMFS provides information that: (1) marine mammals would need to be within about 200 m (656 ft) of the airgun array in order to incur TTS (Level B harassment) and significantly closer in order to incur an auditory injury; (2) the hydrophone array and vessel precludes or discourages marine mammals from entering the area for potential injury, and (3) using NVDs during periods of darkness would allow detection of marine mammals on the surface to that distance.

On the matter of practicability, NMFS has been informed by SOI that requiring a shutdown of the airgun arrays due to inclement weather or darkness in the Arctic would reduce overall effectiveness by about 40 percent. Such a loss in efficiency could increase the potential for SOI and other companies to increase effort by bringing additional seismic vessels into the Beaufort and/or Chukchi Seas. As a result, implementation of this suggestion as a mitigation measure is considered by NMFS as not practicable for both economic and practical reasons.

However, an alternative mitigation measure has been identified by NMFS and is being reviewed that could increase detection of marine mammals during darkness. Using a high-frequency marine mammal monitoring (HF/M3) sonar, similar to a model used by the U.S. Navy. The HF/M3 sonar is capable of detecting marine mammals out to about 2 km (1.1 mi), with up to 98 percent detection ability (depending upon animal size, distance from sonar and animal depth) (Ellison and Stein, 1999) and has the capability to be ramped up to avoid injury to marine mammals (as it can detect the mammal prior to the HF/M3 sonar reaching levels of auditory injury). It should be noted that this sonar does not require a marine mammal to be vocalizing in order to be detected and has the capability of being ramped-up, ensuring that, once a marine mammal is detected within a 2–km (1.1 mi) radius, powering up the HF/M3 ceases until the marine mammal is no longer detected within the 2–km zone. Once ramp-up of the HF/M3 is complete, seismic surveys can commence. During surveys, the HF/M3 would continue to monitor the area closest to the array where there is a higher potential for injury, if marine mammals were not either deflected by the seismic noise or detected by MMOs, passive acoustics or active acoustics. NMFS believes that utilizing the HF/M3 with ramp-up will result in fewer marine mammal harassments and prevent auditory injury as it is most effective close to the vessel where potential auditory injury may occur.

Moreover, as stated in the **Federal Register** Notice of Proposed IHA, once the safety zones are visually established and pre-survey monitoring has concluded that there are no marine mammals within the safety zones, seismic surveys can commence and continue into low visibility conditions. However, if for any reasons the seismic sources are stopped during low visibility conditions, they are not to be restarted until the conditions are suitable for the marine mammal visual monitoring so that the safety zones can be re-established. Nevertheless, ramping up of airguns and other seismic equipment during under normal visual conditions is expected to keep marine mammals from entering the established safety zones. Please refer to Monitoring and Mitigation Measures section below for a detailed description.

Comment 48: The NSB states that Shell's current application states that the safety zone for Deep Seismic activities in the Beaufort Sea will be 13.45 km (8.4 mi) from the sound source, and that the entire safety zone will be monitored by one on-duty MMO aboard the seismic vessel, and one MMO aboard a single chase vessel. Even with the aide of binoculars, night-vision equipment, and laser equipment (as Shell proposes), it is highly unlikely that two MMOs can monitor an entire 13.45 km (8.4 mi) safety radius with more than limited effectiveness. It is unclear how NMFS can permit Shell to conduct seismic operations when industry is not capable of adequately monitoring safety zones which are designed to protect marine mammals from physical harm or death.

Response: NMFS clarifies that the stated distance of 13.45 km (8.4 mi) is the safety zone established to ensure that SPLs of 160 dB or greater do not affect 12 or more non-migratory bowhead or gray whales. All parties recognize that marine mammals will not be detected by MMOs onboard the M/V Gillavar at these distances. As a result, SOI is required to monitor this zone by chase (support) vessels in the Beaufort and Chukchi Seas, and may use aircraft in the Beaufort Sea. It should be recognized that the 160–dB monitoring program is designed to locate concentrations of marine mammals that may be feeding or conducting another biologically significant activity (and not migrating). As a result, they should be more easily detected by vessel and aircraft MMOs. However, as noted in this **Federal Register** notice, at 160 dB, marine mammals may, at worst, experience a

significant behavioral response to seismic noise. It is NMFS' intent here, that bowhead and gray whales not be harassed away from important habitat (even temporary habitat), not that they simply not be annoyed.

Comment 49: The Commission recommends that NMFS require that the IHA require that operations be suspended immediately if a dead or seriously injured marine mammal is found in the vicinity of the operations and if that death or injury could be attributable to the applicant's activities. Any suspension should remain in place until NMFS has: (1) has reviewed the situation and determined that further deaths or serious injuries are unlikely to occur or (2) has issued regulations authorizing such takes under section 101(a)(5)(A) of the MMPA.

Response: NMFS concurs with the Commission's recommendation and will require the immediate suspension of seismic activities if a dead or injured marine mammal has been sighted within an area where the Holder of the IHA deployed and utilized seismic airguns within the past 24 hours.

Comment 50: The Commission states that if NMFS chooses to proceed with issuance of the requested incidental harassment authorization absent a broader, longer term analysis, it should require the applicant to implement all practicable monitoring and mitigation measures to minimize behavioral disturbance and other possible adverse impacts to bowhead whales, beluga whales, and other marine mammal species with an emphasis on key areas known to be important for breeding, molting, and feeding.

Response: NMFS agrees with the Commission's recommendation as it pertains to the monitoring and mitigation requirements. As described in this **Federal Register** document, NMFS believes that it has required, through the IHA issued to SOI on August 19, 2008, all practicable mitigation and monitoring measures that will result in the least practicable adverse impact on affected marine mammal species and stocks and not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence uses. In addition to standard mitigation measures, such as shutdowns for marine mammals within a 180/190–dB safety zone, and ramp-up of airguns to avoid potential injury or startle effect, the IHA requires (1) a 120–dB rms monitoring-safety zone for cow/calf pairs of bowhead whales in the Beaufort Sea; (2) a 160–dB rms monitoring-safety zone for aggregations of feeding whales in the Beaufort and Chukchi seas; (3) seismic shut-down criteria to protect bowhead and gray whales when inside the 120–dB or 160–dB monitoring-safety zones; and (4) time, area and distance measures to ensure no unmitigable adverse impact on the availability of marine mammals for taking for subsistence uses.

Comment 51: The Commission recommends that NMFS together with the applicant and other appropriate agencies and organizations, develop a broad based population monitoring and impact assessment program to assess whether these activities, in combination with other risk factors, are (1) individually or cumulatively having any significant adverse population level effects on marine mammals, or (2) having an unmitigable adverse effect on the availability of marine mammals for subsistence use by Alaska Natives. Expeditious development of such a monitoring program is important to ensure that scientists have the baseline information necessary to detect and possibly identify the causes of change over time. The Commission would welcome the opportunity to discuss with NMFS and interested parties how best to develop such a program (for example, through co-sponsorship of a workshop).

Response: A detailed description of the monitoring program submitted by SOI was provided in SOI's application, cited in the **Federal Register** notice of the proposed IHA, and posted on the NMFS' IHA webpage. As a result of a dialogue on monitoring by scientists and stakeholders attending NMFS' public meetings in Anchorage in April 2006, October 2006, April 2007, and April 2008, the industry has expanded its monitoring program in order to fulfill its responsibilities under the MMPA and to address concerns raised by potentially impacted North Slope communities. For the third year, SOI (and other industry participants) have included a far-field marine mammal monitoring component designed to provide baseline data on marine mammals for future operations planning. A description of this monitoring program is provided later in this document (see Joint Industry Program). Scientists are continuing discussions to ensure that the research effort obtains the best scientific information possible. NMFS would welcome the Commission's participation at these Open Water Meetings.

Finally, it should be noted that this far field monitoring program follows the guidance of the Commission's recommended approach for monitoring seismic activities in the Arctic (Hofman and Swartz, 1991), that additional research might be warranted when impacts to marine mammals would not be detectable as a result of vessel observation programs.

Comment 52: The Commission notes that NMFS is proposing to require additional mitigation and monitoring measures in 2008, as were included in the incidental harassment authorization issued to SOI in 2006 and 2007. The Commission also notes that studies conducted as part of a joint industry studies program by the applicant during their 2006 and 2007 seismic survey operations would continue during the proposed 2008 seismic operations. These studies include aerial surveys of marine mammal distribution and abundance along the Chukchi Sea coastline, collection of data (using an acoustic net array) on the occurrence and distribution of beluga whales and on ambient noise levels near villages along the Chukchi Sea coast, and collection of data on the characteristics and propagation of sounds from offshore seismic and vessel based drilling operations that may have the potential to deflect bowhead whales from the migratory routes in the Beaufort Sea. The Commission supports these additional mitigation and monitoring measures and recommends that they be incorporated in the IHA, if issued.

Response: NMFS appreciates the Commission's support for this multi-year undertaking in the Arctic Ocean.

Comment 53: The Commission recommends that known key areas, such as breeding, molting, and feeding areas receive an increased level of monitoring.

Response: Breeding and molting areas for marine mammals are not well described, are likely widespread in the Arctic and, therefore, not easily monitored, and of questionable value for monitoring if seismic survey activities are not nearby. As a result, the monitoring program, agreed upon by participants at the 2008 Open Water Meeting in Anchorage, will focus on specific aspects for monitoring that are believed to be important, including migration and feeding concerns. For additional information, see the relevant discussion elsewhere in this document.

Comment 54: EarthJustice believes that NMFS and Shell are also deficient in regards to passive acoustic monitoring. EarthJustice states that Shell apparently will deploy ''acoustic net arrays'' in the Beaufort and Chukchi Seas to monitor whale calls, ambient noise, and seismic sounds. While the data gathered may be useful, it is not properly termed a mitigation as there is no apparent plan to use the gathered information in real-time to monitor the presence of whales in or near the safety

zone. Additionally, the acoustic net array was apparently used by Shell in 2006 and 2007, yet none of the data presumably acquired from its use is mentioned by either Shell or NMFS in any of the documents associated with the current IHA. To merely collect monitoring data but not incorporate it into management decisions renders such decision-making arbitrary.

Response: Both SOI's IHA application and NMFS' proposed IHA notice describe the Beaufort and Chukchi Seas passive acoustic monitoring (PAM) programs as part of the long-term industry monitoring program. As EarthJustice notes this PAM program is not a mitigation measure. The purpose of the monitoring program is described later in this document. The data collected from the net arrays in the Chukchi and Beaufort Sea will require several years of data collection to determine meaningful trends in potential bowhead whale displacement as a result of industrial sounds in these areas. At this time, NMFS does not believe this PAM system can be modified to provide real-time data and is not practicable nor necessary to employ similar near-real-time systems as marine mammal vocalizations do not provide information on the number of marine mammals in the area, but simply provide a cue to MMOs to marine mammal presence.

Comment 55: EarthJustice recommends that NMFS require Shell to collect fecal samples to monitor stress and reproductive status to individual animals exposed to seismic surveys. This information can be used to determine whether stress from exposure to seismic surveys may lead to reproductive failure.

Response: NMFS concurs that conducting research to monitor stress and reproduction in marine mammals can be a valuable tool for conservation, as indicated by similar studies on North Atlantic right whales. However, this type of research requires a Scientific Research Permit to be issued by NMFS under section 104 of the MMPA, unless the scat collection did not involve a close approach to a marine mammal. Currently, the NSB Department of Wildlife is collecting feces from harvested whales. Intended analyses include looking at stress and reproductive hormones. The NSB Wildlife Department does not have a permit to collect feces from live bowheads, although they do have a permit for biopsy sampling and satellite tagging. As the NSB Wildlife Department has archived fecal samples from harvested bowheads going back several years, there may be some merit to examining hormone levels in feces relative to the amount of industrial activity in the Beaufort Sea (although stress hormones cannot be analyzed from old material). NMFS believes this research should be discussed further at the 2009 Open Water Meeting.

Reporting Concerns

Comment 56: The Commission requests that NMFS provide information on whether and, if so, how many times activities were shut-down during the 2006 and 2007 operations within the 180–dB, 160–dB, and 120–dB safety and disturbance zones due to the presence of cetaceans.

Response: For information regarding times for shutdowns by SOI in 2006 and 2007, for ConocoPhillips in 2006 and for GX Technology in 2006, NMFS recommends the Commission review the Comprehensive Report for the 2006 seismic survey program and the 90–day report for SOI's 2007 seismic season which are available on line (see **ADDRESSES**).

Comment 57: The NSB notes that in 2006, Shell and other oil and gas companies suggested that data collected in 2006 would be available to modify and improve future monitoring and mitigation efforts. These data were not analyzed fully and available until the end of 2007. Thus, these data were not available to adjust the monitoring program for 2007. Results from 2008 must be available with sufficient time to review and revise results for the 2009 season. For this to occur, industry must have their draft reports completed by late March 2009. NMFS should set such a deadline for reporting. This report should include an assessment of cumulative effects from the multiple oil and gas operations and other human activities occurring in the Chukchi and Beaufort Seas.

Response: Under NMFS regulations, previous IHAs, and the IHA issued to SOI on August 19, 2008, SOI is required to submit a report on seismic activities and a preliminary assessment on the impacts the activity may have had on marine mammals within 90 days of completion of the activity. SOI's 2007 draft 90–day report was provided to the NSB and others in late February, 2008. Moreover, the IHA also requires SOI to schedule a post-season review of their activities with Native communities no later than 90 days following the completion of geophysical activities in the Chukchi Sea. The intent of these meetings is to share preliminary results of geophysical activities, any potential impacts they may have had on marine mammals and to discuss any concerns residents may have concerning the fall 2008 Chukchi Sea operations.

It is not realistic to believe, however, that a cumulative impact assessment would be available within 90 days of completion of SOI's activity and contained in the 90–day report. SOI's 2008 IHA (similar to the 2007 IHA) requires the final comprehensive report to be submitted to NMFS within 240 days of issuance of the IHA. This document is usually available prior to the spring open-water meeting. In conclusion, NMFS notes that, while the 2006 data was not totally available (one analysis was missing) to adjust the monitoring program for 2007, it and the 2007 Comprehensive Report were available were available prior to the April, 2008 Open Water Meeting and its review of SOI's 2007 mitigation and monitoring program and SOI's 2008 program.

Comment 58: The NSB notes that in 2008, Shell commits to reporting measurements of the airgun array sounds ''as soon as possible'' after recovery of the equipment. In 2007, Shell committed to report this information within 72 hours after recovery. The NSB strongly recommends NMFS require the 72–hour turnaround time.

Response: The 2007 and 2008 IHAs issued to SOI require SOI to submit to NMFS the sound source verification (SSV) test results, including the distances to the various radii within 5 days of completing the measurements. NMFS believes that this requirement is consistent with the CAA, which requires an SSV test to be conducted within 72 hours of initiating or having initiated operations in the Beaufort or Chukchi Seas. The IHA, therefore, provides SOI with only two days after completing the SSV to complete the analyses and submit the report to NMFS. NMFS does not believe this additional time for submitting the SSV results in adverse impacts on marine mammals as SOI will have already established preliminary marine mammal safety zones for the protection of marine mammals.

Research Concerns

Comment 59: The NSB states that NMFS must require SOI to conduct studies on the impacts of seismic to important fish and invertebrate species.

Response: In this **Federal Register** document, NMFS has determined that impacts to food sources for marine mammals are unlikely to result in more than a negligible impact on marine mammals. As a result, NMFS recommends that this research be added to the agenda at the 2009 Open Water

Meeting where this research can be discussed and prioritized in relation to the proposed monitoring being conducted on impacts on marine mammals, principally bowhead and beluga whales.

Comment 60: The NSB states that Shell should be required by NMFS to collect data on spotted seals using surveys that are specifically designed for spotted seals.

Response: Similar to the previous response, NMFS recommends that additional marine mammal assessment studies be on the agenda at the 2009 Open Water Meeting where marine mammal assessments and monitoring impacts on marine mammals from industry activities can be discussed and prioritized in relation to the monitoring program proposed by SOI and other industry participants.

National Environmental Policy Act Concerns

Comment 61: Oceana states that SOI's proposal, while very large in scope, is only one of numerous oil and gas activities proposed or ongoing in the Arctic, and it is well documented that these activities may have substantial negative effects on marine mammals and other Arctic species. Nonetheless, there has never been a comprehensive evaluation of the cumulative effects of seismic activities in the Arctic. Particularly in light of the dramatic effects of climate change in the Arctic, NMFS must not approve further seismic activities without such an evaluation.

Response: NMFS believes that proactive efforts to conserve and protect marine mammals and other Arctic species, such as NMFS' initiation of status reviews of ice seals and the recent FWS' ESA listing of polar bears, combined with prudent natural resources management and regulations on industrial activities by Federal Agencies would reduce these adverse impacts to biologically non-significant or negligible levels. In addition, monitoring and mitigation measures required for industrial activities that have a potential to take marine mammals further reduce and minimize negative effects to marine mammal species and stocks. Long term research and monitoring results on ice seals in the Alaska's North Slope have shown that effects of oil and gas development on local distribution of seals and seal lairs are no more than slight, and are small relative to the effects of natural environmental factors (Moulton *et al.*, 2005; Williams *et al.*, 2006).

NMFS does not agree with Oceana's statement that there has never been a comprehensive evaluation of the cumulative effects of seismic activities in the Arctic. The MMS 2006 PEA, the NMFS 2007 SEA, the NMFS/MMS 2007 draft PEIS, and the NMFS 2008 SEA for the proposed issuance of five seismic survey and shallow hazard and site clearance survey activities for the 2008 open water season all provide comprehensive evaluation of the cumulative effects of seismic activities in the Arctic. For additional information, please see responses to comments on this subject previously in this document.

Comment 62: EarthJustice states that NMFS indicates that it will rely on a supplemental EA (SEA) to satisfy its obligations under NEPA. The SEA has not yet been made available to the public. NMFS has repeatedly denied requests for a copy of the SEA, stating that the document is not yet complete and promising to post it to the public on its incidental take webpage when it is complete. The document is not presently posted on that webpage. Prior to issuing any IHAs, however, NMFS must make its SEA available for public review and comment. We hereby renew our request for the SEA and an opportunity to comment on it.

Response: NMFS prepared and released to the public its Supplemental EA to the 2006 MMS PEA on this activity in early August, 2008. NMFS has fulfilled its obligations under NEPA by completing an SEA that describes proposed action of issuing IHAs to the seismic industry to conduct offshore seismic and shallow hazard surveys in the Beaufort and Chukchi Seas in 2008, the alternatives to that action, the potential impacts on the human environment (including cumulative impacts) by issuance of these IHAs and an analysis of the mitigation measures to reduce impacts on marine mammals and subsistence hunters to the greatest level practicable. Contrary to the statement by EarthJustice, Federal agencies are not required in every circumstance to make a draft Environmental Assessment available for public review and comment. NMFS provided the public with environmental information related to SOI's request for an IHA during the 30–day comment period on the proposed notice of issuance of SOI's IHA. Once the Supplemental EA was finalized, the document was posted on NMFS' website for public review. The 2008 SEA is available for downloading on its web-page (see **ADDRESSES**).

Comment 63: EarthJustice states that NMFS has initiated the process of preparing an EIS analyzing the seismic surveying in the Arctic Ocean, and has produced a draft programmatic environmental impact statement. NMFS must complete a final EIS to evaluate Shell's surveys, together with the other seismic and shallow hazard surveying activity proposed for the summer of 2008 in the Beaufort and Chukchi Seas, before permitting such activities to go forward. It cannot continue to rely on and ''update'' the 2006 PEA with subsequent EAs in light of these potentially significant impacts. EarthJustice identifies in its comments (addressed elsewhere) the flaws with the analysis provided in the 2006 PEA that make it inappropriate for NMFS to continue to rely on that obsolete document and the comments submitted on the PEA that further recount the inadequacies of the PEA.

Response: In 2008, NMFS prepared a Final SEA to analyze further the effects of SOI's (and other companies) proposed 3D deep and open-water shallow hazard and site clearance survey activities for the 2008 season. NMFS has incorporated by reference the analyses contained in MMS 2006 Final PEA for Arctic OCS Seismic Surveys in the Beaufort and Chukchi Seas and has also relied in part on analyses contained in the MMS 2007 Final EIS for the Chukchi Sea Lease Sale 193, the MMS 2003 Final EIS for multiple lease sales, and the NMFS/MMS 2007 DPEIS.

The MMS' 2006 Final PEA analyzed a broad scope of proposed seismic activities in the Arctic Ocean. In fact, the PEA assessed the effects of multiple, ongoing seismic surveys (up to 8 surveys) in the Beaufort and Chukchi Seas for the Arctic open water season. Although SOI's proposed activity for this season was not explicitly identified in the 2006 PEA, the PEA did contemplate that future seismic activity, such as those by SOI and other companies could occur. NMFS believes the range of alternatives and environmental effects considered in the MMS 2006 PEA, combined with NMFS' SEA for the 2008 season are sufficient to meet the agency's NEPA responsibilities. In addition, the 2008 SEA includes new information obtained since the 2006 Final PEA was issued, including updated information on cumulative impacts. NMFS also includes a new section in the 2008 SEA, which describes in summary, the results of the 2006 and 2007 monitoring reports. As a result of our review and analysis, NMFS has determined that it was not necessary to prepare an EIS for the issuance of an IHA to SOI in 2008 for 3D deep seismic and shallow hazard survey activities in the Beaufort and Chukchi Seas, but that preparation of an SEA and issuance of a Finding of No

Significant Impact (FONSI) were sufficient under NEPA.

Comment 64: EarthJustice states that the analysis in the PEA understates the risk of significant impacts to bowhead whales and all marine mammals. It assumes that source vessels-both 3–D seismic and shallow hazard vessels-will ensonify much smaller zones than those which have been subsequently measured in the field. In practice, seismic airgun noise has propagated far greater distances than NMFS anticipated in the PEA, and thus th authorized activity presumably has displaced marine mammals from far more habitat, including important feeding and resting habitats, than NMFS's analysis in the PEA anticipated. Based on the propagation actually measured in 2006 and 2007, the impacts of a single 3–D seismic survey are two to three times as large as NMFS anticipated, or more. The impacts of a single shallow hazard survey or ice gouge survey are comparable to the impacts NMFS anticipated from a single 2D or 3D seismic survey. Before authorizing further seismic surveying activity or shallow hazard surveys in the Arctic Ocean, NMFS must complete the programmatic EIS that it began in 2006 to evaluate the potentially significant impacts of such activities.

Response: NMFS believes that a SEA is the appropriate NEPA analysis for this season as the amount of activity for 2008 is less than what was analyzed in the 2006 PEA. As noted in the 2006 PEA, 20 km (12.4 mi) was used for illustrative purposes in an exercise to estimate impact of 4 seismic vessels operating within 24 km (15 mi) of each other. To do so, MMS created a box (that was moveable along the Beaufort or Chukchi Sea coast) to make these estimates. NMFS believes that the use of 20 km (12.4 mi) remains the best information available at this time and was the radius agreed to by participants at the 2001 Arctic Open-water Noise Peer Review Workshop in Seattle, Washington. This estimate is based on the results from the 1998 aerial survey (as supplemented by data from earlier years) as reported in Miller *et al.* (1999). In 1998, bowhead whales below the water surface at a distance of 20 km (12.4 mi) from an airgun array received pulses of about 117 - 135 dB re 1 microPa rms, depending upon propagation. Although EarthJustice states that propagation actually measured in 2006 and 2007 showed that the impacts of a single 3D seismic survey are two to three times as large as NMFS anticipated, EarthJustice has failed to provide any data to support this statement. In fact, the marine mammal monitoring reports on the 2006 and 2007 open water seismic surveys clearly showed that at 20 km (12.4 mi) the received levels from large airgun arrays used in 3D seismic surveys fall between 140 and 160 dB re 1 microPa (Ireland *et al.*, 2007a; 2007b; Patterson *et al.*, 2007; Funk *et al.*, 2007; 2008), which is below NMFS' current noise exposure standard for Level B behavioral harassment. For this reason, until more data collection and analyses are conducted on impacts of anthropogenic noise (principally from seismic) on marine mammals in the Beaufort and Chukchi Seas, NMFS will continue to use 20 km (12.4 mi) as the radius for estimating impacts on bowhead whales during the fall migration period.

Comment 65: EarthJustice states that the 2006 PEA fails to provide site-specific analysis. In 2006, in order to reduce the likelihood of significant impacts in the face of a lack of site-specific analysis, NMFS imposed 160–dB and 120–dB safety zones when authorizing surveys pursuant to the 2006 PEA. At a minimum, it must do the same for SOI's seismic surveys here.

Response: NMFS does not agree with EarthJustice's comment. Although the MMS 2006 PEA did not explicitly provide site- specific analysis on the proposed SOI 3D deep seismic and shallow hazard and site clearance surveys, the NMFS SEA prepared for the 2008 open-water season described its specific location and time of all offshore seismic operations. As in MMS' 2006 PEA, NMFS' 2008 SEA has described additional mitigation measures such as imposing the 160–dB safety zone for seismic activities in the Beaufort and Chukchi Seas when an aggregation of 12 or more bowhead or gray whales is sighted and a 120–dB safety zone in the Beaufort Sea when 4 of more cow/calf pairs are sighted by aerial surveys. This mitigation measure is required in the IHA issued to SOI. Regarding imposing the 120–dB safety zone in the Chukchi Sea, NMFS has determined that it would pose safety and practical concerns for marine mammal monitoring. Therefore, a safety zone based on received level of 120 dB re 1 microPa will not imposed in the Chukchi Sea as it has been determined to be impracticable under the MMPA.

Comment 66: EarthJustice states that the scope of the PEA is explicitly limited to activities that occurred during 2006. Those seismic survey activities have already occurred, as well as an additional season worth of activities in 2007. The PEA does not evaluate activities that will occur over a period of several years, though NMFS has continued to rely on it as if its scope were for a multi-year program of seismic surveys. In addition, the PEA uses arbitrary significance criteria for non-endangered marine mammals that would allow long-lasting impacts to populations, or in fact the entire Arctic ecosystem, that would nonetheless be deemed insignificant.

Response: NMFS does not agree with the statement. In addition, EarthJustice has failed to provide any support for their statements. The MMS 2006 PEA, which NMFS was a cooperating agency, provided a thorough description and analysis on the affected environment, including ESA-listed and non-ESA-listed species. Under the NEPA, there is no ''significance criteria for non-endangered'' species. The criteria for determining whether a proposed action would result in significant effects to the environment are contained in CEQ's regulations. EarthJustice's statement that such analysis ''would allow long-lasting impacts to populations, or in fact the entire Arctic ecosystem, that would nonetheless be deemed insignificant'' we would argue supports our adoption of MMS' 2006 Final PEA. In addition, NMFS has prepared and released to the public an SEA for the proposed 2008 Arctic seismic surveys in the Chukchi and Beaufort Seas (see **ADDRESSES** for availability). This SEA incorporates by reference the relevant information contained in the 2006 PEA and updates that information where necessary to assess impacts on the marine environment from the 2008 seismic survey activities. Further, the SEA and FONSI considered the CEQ significance criteria (including the criteria developed by NMFS) to determine whether take of marine mammals incidental to SOI's seismic and shallow hazard surveys would result in significant impacts to the human environment. NMFS believes that the agency has complied with the requirements of NEPA in its preparation of its NEPA documents.

Comment 67: EarthJustice suggests that, as it has done with the bowhead whale in recent NEPA analyses of seismic surveys, in order to ensure that it takes a hard look at the potential significance of impacts to all marine mammals, NMFS should use PBR (potential biological removal) as the metric to measure significance for other species that will be affected. Thus, for humpback whales from the western North Pacific stock that may be affected by seismic and shallow-hazard or site-clearance surveys in the Chukchi and Beaufort Seas, an impact that affects the reproduction or survival of one humpback whale annually should be deemed a significant impact. The

scientifically indefensible significance criteria used in the PEA for all species other than bowhead whales are inappropriate for an evaluation of impacts from seismic surveys, as indicated by MMS's use of more defensible significance criteria based on potential biological removal for marine mammal populations affected by seismic surveys in the Gulf of Mexico.

Response: MMS used the PBR concept in its 2004 PEA on ''*Geological and Geophysical Exploration for Mineral Resources on the Gulf of Mexico Outer Continental Shelf*'' to determine whether its action of issuing Geological and Geophysical permits was significant under NEPA. For all affected marine mammal species, MMS found that exposure to seismic operations in the Gulf of Mexico was not expected to result in any mortality or serious injury, thereby it would not result in exceeding the PBRs for affected marine mammal species. This was interpreted by MMS to mean that while the activity could be potentially adverse, it would not have a significant impact. As a result, MMS determined that it did not need to prepare an EIS. This use of PBR did not extend to an analysis the relationship between Level B behavioral harassment and PBR. It should be recognized that MMS and NMFS are preparing a Draft EIS on the Gulf of Mexico seismic survey industry (see 69 FR 67535, November 18, 2004). That Draft PEIS is expected to be released for public review in early in 2009. Also, it should be understood that PBR is used by NMFS to estimate the number of marine mammals (by species or stock) that can be *removed by serious injury* (any injury that can result in mortality (50 CFR 216.3)) *or mortality* by commercial fisheries, subsistence hunting, or other activities. Use of the PBR concept in the 2006 MMS Final PEA on Arctic Seismic, was conducted for purposes of making a determination of significance under NEPA, not for potential removals from the population. As serious injury and mortality are neither expected nor authorized for SOI's seismic surveys, the use of PBR is not warranted for determining take quotas for marine mammals.

Comment 68: Commenters state that NMFS appears to rely on the NEPA analysis in the draft PEIS in clear violation of NEPA law. NEPA requires agencies to prepare a draft EIS, consider public and other agency comments, respond to these comments in its final EIS, and wait 60 days before issuing a final decision. Before the record of decision has been issued on the final PEIS, NMFS cannot take any action on the proposed seismic surveys that would allow activities that adversely effect the environment. Here, the very purpose of the PEIS process is to consider open water seismic surveys in the Chukchi and Beaufort Seas for the years 2007 and beyond. NMFS cannot authorize such activities before the NEPA process is complete. NMFS may not avoid this requirement by completing only a supplemental EA this season. This is because the seismic activity has the potential to significantly impact marine resources and subsistence hunting, and therefore an EIS is required.

Response: See previous responses on this concern. Contrary to the statement, NMFS relied on information contained in the MMS 2006 Final PEA, as updated by NMFS' 2008 SEA for making its determinations under NEPA and that the 2007 Draft PEIS was not the underlying document to support NMFS' issuance of SOI's IHA. NMFS merely relied upon specific pieces of information and analyses contained in the Draft PEIS to assist in preparing the SEA. It is NMFS' intention that the Final PEIS currently being developed will be used to support, in whole, or in part, future MMPA actions relating to oil and gas exploration in the Arctic Ocean. Additionally, NMFS believes that a SEA is the appropriate NEPA analysis for this season as the amount of activity for 2008 is less than what was analyzed in the 2006 PEA.

Comment 69: The NSB states that neither the 2006 PEA nor the Draft PEIS satisfy NMFS' NEPA obligation. First, the PEA explicitly limited its scope to the 2006 season. Additional seismic work cannot be authorized without further NEPA analysis of the cumulative impacts of increasing activity offshore in the Arctic Ocean. In addition, the proposed surveys threaten potentially significant impacts to the environment, and must be considered in a full EIS.

Response: See responses to previous concerns regarding NMFS' implementation of NEPA.

Endangered Species Act Concerns

Comment 70: EarthJustice and NSB state that the proposed IHA will affect, at a minimum, one endangered species, the bowhead whale. It will likely also affect endangered humpback and fin whales. As a consequence, NMFS must engage in consultation under Section 7 of the ESA prior to issuing the IHA. Previous recent biological opinions for industrial activities in the Arctic (e.g., Northstar) have suffered from inadequate descriptions of the species, inadequate descriptions of the environmental baseline, inadequate descriptions of the effects of the action, inadequate analysis of cumulative effects, and inadequate descriptions and analysis of proposed mitigation. NMFS has also failed to evaluate the effects of such activities on humpback and fin whales. EarthJustice expects NMFS will perform the full analysis required by law and avoids these problems in its consultation for the proposed IHA. Also, EarthJustice notes that the law is clear (citing *Connor* v. *Burford*, 848 F.2d 1441, 1453 (9th Cir. 1988) that the ESA requires the Biological Opinion (BiOp) to analyze the effect of the entire agency action. Given that SOI plans to conduct exploration drilling in the Beaufort Sea, any consultation on the IHA must cover these activities as well.

Response: Under section 7 of the ESA, NMFS has completed consultation with the MMS on ''*Oil and Gas Leasing and Exploration Activities in the U.S. Beaufort and Chukchi Seas, Alaska; and Authorization of Small Takes Under the Marine Mammal Protection Act.*'' In a BiOp issued on July 17, 2008, NMFS concluded that the issuance of seismic survey permits by MMS and the small take authorization under the MMPA for seismic surveys are not likely to jeopardize the continued existence of the endangered fin, humpback, or bowhead whale. As no critical habitat has been designated for these species, none will be affected. The 2008 BiOp takes into consideration all oil and gas related activities that are reasonably likely to occur, including exploratory oil drilling activities. This BiOp does not include impacts from production activities, which are subject to a separate consultation.

In addition, NMFS has issued an Incidental Take Statement under this BiOp for SOI's seismic survey activities which contains reasonable and prudent measures with implementing terms and conditions to minimize the effects of take of bowhead whales.

Comment 71: EarthJustice states NMFS may authorize incidental take of bowhead whales under the ESA pursuant to Section 7(b)(4) of the ESA, but only where such take occurs while ''carrying out an otherwise lawful activity.'' To be ''lawful,'' such activities must ''me*et al.* State and Federal legal requirements except for the prohibition against taking in section 9 of the ESA.'' As noted in its comment letter, EarthJustice believes that SOI's proposed activities violate the MMPA and NEPA and therefore are ''not otherwise lawful.'' Any take authorization for listed marine mammals would, therefore, violate the ESA, as well as these other statutes.

Response: As noted in this **Federal Register** document, NMFS has made the

necessary determinations under the MMPA, the ESA, and NEPA regarding the incidental harassment of marine mammals by SOI while it is conducting activities permitted legally under MMS' jurisdiction.

Other Concerns

Comment 72: EarthJustice, in a footnote requested that NMFS include in its administrative record for this permit, all material presented at the 2008 open water meeting, including power point presentations.

Response: The administrative record for this IHA contains the draft report of the meeting, in addition to those documents that were provided to attendees at the meeting, principally the draft 2007 Comprehensive JMP Report. Power point presentations remain the property of the presenters and were not provided to either NMFS, MMS or attendees. As a result, NMFS does not have copies of the presentations as part of its Administrative Record.

Description of Habitat and Marine Mammals Affected by the Activity

A detailed description of the Beaufort and Chukchi Sea ecosystems and their associated marine mammal populations can be found in the NMFS/MMS Draft PEIS and the MMS Final Programmatic Environmental Assessment (Final PEA) on Seismic Surveys (see ADDRESSES for availability) and also in several other documents (e.g., MMS, 2007 Final EIS for Chukchi Sea Planning Area: Oil and Gas Lease Sale 193 and Seismic Surveying Activities in the Chukchi Sea. MMS 2007–026).

Marine Mammals

The Beaufort/Chukchi Seas support a diverse assemblage of marine mammals, including bowhead whales, gray whales, beluga whales, killer whales, harbor porpoise, ringed seals, spotted seals, bearded seals, walrus and polar bears. These latter two species are under the jurisdiction of the U.S. Fish and Wildlife Service (USFWS) and are not discussed further in this document. Descriptions of the biology and distribution of the marine mammal species under NMFS' jurisdiction can be found in SOI's IHA application, the 2007 NMFS/MMS Draft PEIS on Arctic Seismic Surveys, and the MMS 2006 Final PEA on Arctic Seismic Surveys. Information on these marine mammal species can also be found in NMFS SARS. The 2007 Alaska SARS document is available at: *http://www.nmfs.noaa.gov/pr/pdfs/sars/ak2007.pdf*. Please refer to those documents for information on these species.

Potential Effects of Seismic Surveys on Marine Mammals

Disturbance by seismic noise is the principal means of taking by this activity. Support vessels and aircraft may provide a potential secondary source of noise. The physical presence of vessels and aircraft could also lead to non-acoustic effects on marine mammals involving visual or other cues.

As outlined in previous NMFS documents, the effects of noise on marine mammals are highly variable, and can, in general, be categorized as follows (based on Richardson *et al.*, 1995):

(1) The noise may be too weak to be heard at the location of the animal (i.e., lower than the prevailing ambient noise level, the hearing threshold of the animal at relevant frequencies, or both);

(2) The noise may be audible but not strong enough to elicit any overt behavioral response;

(3) The noise may elicit reactions of variable conspicuousness and variable relevance to the well being of the marine mammal; these can range from temporary alert responses to active avoidance reactions such as vacating an area at least until the noise event ceases;

(4) Upon repeated exposure, a marine mammal may exhibit diminishing responsiveness (habituation), or disturbance effects may persist; the latter is most likely with sounds that are highly variable in characteristics, infrequent and unpredictable in occurrence, and associated with situations that a marine mammal perceives as a threat;

(5) Any anthropogenic noise that is strong enough to be heard has the potential to reduce (mask) the ability of a marine mammal to hear natural sounds at similar frequencies, including calls from conspecifics, and underwater environmental sounds such as surf noise;

(6) If mammals remain in an area because it is important for feeding, breeding or some other biologically important purpose even though there is chronic exposure to noise, it is possible that there could be noise-induced physiological stress; this might in turn have negative effects on the well-being or reproduction of the animals involved; and

(7) Very strong sounds have the potential to cause temporary or permanent reduction in hearing sensitivity. In terrestrial mammals, and presumably marine mammals, received sound levels must far exceed the animal's hearing threshold for there to be any TTS in its hearing ability. For transient sounds, the sound level necessary to cause TTS is inversely related to the duration of the sound. Received sound levels must be even higher for there to be risk of permanent hearing impairment. In addition, intense acoustic or explosive events may cause trauma to tissues associated with organs vital for hearing, sound production, respiration and other functions. This trauma may include minor to severe hemorrhage.

Effects of Seismic Survey Sounds on Marine Mammals

Behavioral Effects

In its IHA application, SOI states that the only anticipated impacts to marine mammals associated with noise propagation from vessel movement and seismic airgun operations would be the temporary and short term displacement of whales and seals from within ensonified zones produced by such noise sources. Any impacts on the whale and seal populations of the Beaufort and Chukchi Seas activity areas are likely to be short-term and transitory arising from the temporary displacement of individuals or small groups from locations they may occupy at the times they are exposed to seismic sounds between the 160- to 190–dB received levels. In the case of bowhead whales however, that displacement might well take the form of a deflection of the swim paths of migrating bowheads away from (seaward of) received noise levels lower than 160 db (Richardson *et al.*, 1999). Presently, it is not known at what distance after passing the seismic source that bowheads will return to their previous migration route. However, NMFS does not believe that this offshore deflection is biologically significant (although it might be significant for purposes of subsistence hunting, as discussed later) as the bowhead migration is believed to remain within the general bowhead whale migratory corridor in the U.S. Beaufort Sea, which varies annually based on environmental factors.

SOI cites Richardson and Thomson [eds]. (2002) to support its contention that there is no conclusive evidence that exposure to sounds exceeding 160 dB have displaced bowheads from feeding activity. NMFS notes that, in 2006, observations conducted onboard a seismic vessel operating in the Canadian Beaufort Sea found that feeding bowhead whales were not observed to respond to seismic sounds at levels of 160 dB or lower.

Results from the 1996–1998 BP and Western Geophysical seismic monitoring programs in the Beaufort Sea indicate that most fall migrating

bowheads deflected seaward to avoid an area within about 20 km (12.4 mi) of an active nearshore seismic operation, with the exception of a few closer sightings when there was an island or very shallow water between the seismic operations and the whales (Miller *et al.*, 1998, 1999). The available data, however, do not provide an unequivocal estimate of the distance (and received sound levels) at which approaching bowheads begin to deflect, but this may be on the order of 35 km (21.7 mi). While Miller *et al.* (1999) surmise that deflection may have begun about 35 km to the east of the seismic operations, they did not provide SPL measurements to that distance, and noted that sound propagation has not been studied as extensively eastward in the alongshore direction, as it has northward, in the offshore direction. Therefore, while this single year of data analysis indicates that bowhead whales may make minor deflections in swimming direction at a distance of 30–35 km (18.6–21.7 mi), there is no indication that the SPL where deflection first begins is at 120 dB, it could be at another SPL lower or higher than 120 dB. Miller *et al.* (1999) also note that the received levels at 20–30 km (12.4–18.6 mi) were considerably lower in 1998 than have previously been shown to elicit avoidance in bowheads exposed to seismic pulses. However, the seismic airgun array used in 1998 was larger than the ones used in 1996 and 1997.

When the received levels of noise exceed some threshold, cetaceans will show behavioral disturbance reactions. The levels, frequencies, and types of noise that will elicit a response vary between and within species, individuals, locations, and seasons. Behavioral changes may be subtle alterations in surface, respiration, and dive cycles. More conspicuous responses include changes in activity or aerial displays, movement away from the sound source, or complete avoidance of the area. The reaction threshold and degree of response also are related to the activity of the animal at the time of the disturbance. Whales engaged in active behaviors, such as feeding, socializing, or mating, appear less likely than resting animals to show overt behavioral reactions, unless the disturbance is perceived as directly threatening.

Masking

Although NMFS believes that some limited masking of low-frequency sounds (e.g., whale calls) is a possibility during seismic surveys, the intermittent nature of seismic source pulses (1 second in duration every 16 to 24 seconds (i.e., less than 7 percent duty cycle)) will limit the extent of masking. Bowhead whales are known to continue calling in the presence of seismic survey sounds, and their calls can be heard between seismic pulses (Greene *et al.*, 1999, Richardson *et al.*, 1986). Masking effects are expected to be absent in the case of belugas, given that sounds important to them are predominantly at much higher frequencies than are airgun sounds.

Injury and Mortality

NMFS and SOI believe that there is no evidence that bowheads or other marine mammals exposed to seismic sounds in the Arctic have incurred an injury to their auditory mechanisms. While it is not positively known whether the hearing systems of marine mammals very close to an airgun would be at risk of temporary or permanent hearing impairment, Richardson *et al.* (1995) notes that TTS is a theoretical possibility for animals within a few hundred meters of the source. More recently, scientists have determined that the received level of a single seismic pulse might need to be ~210 dB re 1 microPa rms (~221–226 dB pk-pk) in order to produce brief, mild TTS. Exposure to several seismic pulses at received levels near 200–205 dB (rms) might result in slight TTS in a small odontocete, assuming the TTS threshold is a function of the total received pulse energy. Seismic pulses with received levels of 200–205 dB or more are usually restricted to a radius of no more than 200 m (656 ft) around a seismic vessel operating a large array of airguns. For baleen whales, there are no data, direct or indirect, on levels or properties of sound that are required to induce TTS. However, according to SOI, there is a strong likelihood that baleen whales (i.e., bowheads, gray whales and humpback whales) would avoid the approaching airguns (or vessel) before being exposed to levels high enough for there to be any possibility of onset of TTS.

For pinnipeds, information indicates that for single seismic impulses, sounds would need to be higher than 190 dB rms for TTS to occur while exposure to several seismic pulses indicates that some pinnipeds may incur TTS at somewhat lower received levels than do small odontocetes exposed for similar durations. This indicates to NMFS that the 190–dB safety zone (see Mitigation and Monitoring later in this document) provides a sufficient buffer to prevent PTS in pinnipeds.

A marine mammal within a radius of ≤100 m (≤328 ft) around a typical large array of operating airguns may be exposed to a few seismic pulses at received levels of ≥205 dB, and possibly more pulses if the marine mammal moved with the seismic vessel. When PTS occurs, there is physical damage to the sound receptors in the ear. In some cases, there can be total or partial deafness, whereas in other cases, the animal has an impaired ability to hear sounds in specific frequency ranges. However, as scientists are reluctant to cause injury to a marine mammal, there is no specific evidence that exposure to pulses of airgun sound can cause PTS in any marine mammal, even with large arrays of airguns. Given the possibility that mammals close to an airgun array might incur TTS, there has been further speculation about the possibility that some individuals occurring very close to airguns might incur PTS. Single or occasional occurrences of mild TTS are not indicative of permanent auditory damage in terrestrial mammals.

Relationships between TTS and PTS thresholds have not been studied in marine mammals, but are assumed to be similar to those in humans and other terrestrial mammals. Acousticians are in general agreement that a temporary shift in hearing threshold of up to 40 dB due to moderate exposure times is fully recoverable and does not involve tissue damage or cell loss. Liberman and Dodds (1987) state, ''... acute threshold shifts as large as 60 dB are routinely seen in ears in which the surface morphology of the stereocilia is perfectly normal.'' (Stereocilia are the sensory cells responsible for the sensation of hearing.). In the chinchilla, no cases of TTS involve the loss of stereocilia, but all cases of PTS do (Ahroon *et al.*, 1996). Cell death clearly qualifies as Level A harassment (injury) under the MMPA. Because there is no cell death with modest (up to 40 dB) TTS, such losses of sensitivity constitute a temporary impairment but not an injury, further supporting NMFS' precautionary approach that establishment of seismic airgun shutdown at 180 dB for cetaceans and 190 dB for pinnipeds, will prevent auditory injury to marine mammals by seismic airgun sounds.

NMFS notes that planned monitoring and mitigation measures (described later in this document) have been designed to avoid sudden onsets of seismic pulses at full power, to detect marine mammals occurring near the array, and to avoid exposing them to sound pulses that have any possibility of causing hearing impairment. Moreover, NMFS does not expect that any marine mammals will be seriously injured or killed during SOI's seismic survey activities, even if some animals are not detected prior to

entering the 180–dB and 190–dB isopleths (safety zones) for cetaceans and pinnipeds, respectively. These criteria were set to approximate a level below where Level A harassment (i.e., defined as ''any act of pursuit, torment or annoyance which has the potential to injure a marine mammal or marine mammal stock in the wild'') from acoustic sources is believed to begin. Because, a decade or so ago, scientists did not have information on where PTS might occur in marine mammals, the High Energy Seismic Survey (HESS) workshop (HESS, 1997, 1999) set the level to prevent injury to marine mammals at 180 dB. NMFS concurred and determined that TTS, which is the mildest form of hearing impairment that can occur during exposure to a strong sound, may occur at these levels (180 dB for cetaceans, 190 dB for pinnipeds). When a marine mammal experiences TTS, the hearing threshold rises and a sound must be stronger in order to be heard. TTS can last from minutes or hours to (in cases of strong TTS) days. For sound exposures at or somewhat above the TTS threshold, hearing sensitivity recovers rapidly after exposure to the noise ends. Few data on sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals, and none of the published data concern TTS elicited by exposure to multiple pulses of sound.

Strandings

In numerous past IHA notices for seismic surveys, commenters have referenced two stranding events allegedly associated with seismic activities, one off Baja California and a second off Brazil. NMFS has addressed this concern several times and without new information, does not believe that this issue warrants further discussion. For information relevant to strandings of marine mammals, readers are encouraged to review NMFS' response to comments on this matter found in 69 FR 74905 (December 14, 2004), 71 FR 43112 (July 31, 2006), 71 FR 50027 (August 24, 2006), 71 FR 49418 (August 23, 2006), 73 FR 46774 (August 11, 2008), and 73 FR 49421 (August 21, 2008). In addition, a June, 2008 stranding of 30–40 melon-headed whales (*Peponocephala spp.*), off Madagascar that appears to be associated with seismic surveys is currently under investigation. One preliminary report indicates that the stranding began prior to seismic surveys starting.

It should be noted that marine mammal strandings recorded in the Beaufort and Chukchi seas do not appear to be related to seismic surveys. Finally, if bowhead and gray whales react to sounds at very low levels by making minor course corrections to avoid seismic noise and mitigation measures require SOI to ramp-up the seismic array to avoid a startle effect, strandings are unlikely to occur in the Arctic Ocean. As a result, NMFS does not expect any marine mammals will incur serious injury, mortality or strandings in the Arctic Ocean.

Migration and Feeding

During the period of seismic acquisition in the Chukchi and Beaufort seas, most marine mammals are expected to be widely dispersed throughout the area. Bowhead whales are expected to be concentrated in the Canadian Beaufort Sea during much of this time, where they are not expected to be affected by SOI's seismic program. The peak of the bowhead whale migration through the Beaufort and Chukchi Seas typically occurs in late August through October, and efforts to reduce potential impacts during this time will be addressed with the actual start of the migration and through discussions with the affected whaling communities. In the Chukchi Sea, the timing of seismic activities will take place while the whales are widely distributed and would be expected to occur in very low numbers within the seismic activity area. If SOI or another company conducts seismic surveys in late September or October in the Beaufort or Chukchi Sea, bowheads may travel in proximity to the seismic survey activity areas and hear sounds from vessel traffic and seismic activities, of which some might be displaced by the planned activities.

The reduction of potential impacts during the 2008 fall bowhead whale migratory period were addressed through discussions with the whaling communities (and will continue through the late fall and winter, 2008/2009 in preparation for the 2009 season). Starting around late August bowheads may travel in proximity to SOI's planned Beaufort Sea seismic activity areas and may hear sounds from vessel traffic and seismic activities, of which some might be displaced seaward by the planned activities. However, SOI believes that it has significantly reduced its period of seismic operations in the Beaufort Sea in 2008 by remaining in the Chukchi Sea until early-September, entering the Beaufort Sea only after the fall subsistence hunt has concluded and after a significant portion of the bowhead whales would have left the Canadian Beaufort Sea on their westward migration to the Chukchi Sea (SOI ended its seismic collection program in the Beaufort Sea on October 10, 2008).

In addition, although there was apparently a period of concentrated feeding in the central Beaufort Sea in September 2007, feeding does not normally appear to be an important activity by bowheads migrating through the eastern and central part of the Alaskan Beaufort Sea or the Chukchi Sea in most years. Sightings of bowhead whales occur in the summer near Barrow (Moore and DeMaster, 2000), and there are suggestions that certain areas near Barrow are important feeding grounds. In addition, a few bowheads can be found in the Chukchi and Bering Seas during the summer and Rugh *et al.* (2003) suggests that this may be an expansion of the western Arctic stock, although more research is needed. In the absence of important feeding areas, the potential diversion of a small number of bowheads away from seismic activities is not expected to have any significant or long-term consequences for individual bowheads or their population.

Effects on Individual Arctic Ocean Marine Mammal Species

In order to facilitate the reader's understanding of the knowledge of impacts of impulsive noise on the principal marine mammal species that are expected to be affected by SOI's seismic survey program, NMFS has previously provided a summary of potential impacts on the bowhead, gray, and beluga whales and the ringed, spotted, and bearded seals. This information can be found in the **Federal Register** (72 FR 31553, June 7, 2007). Information on impacts on marine mammals by seismic activities can also be found in SOI's IHA application.

Numbers of Marine Mammals Expected to Be Harassed by Seismic Survey Activities

The methodology used by SOI to estimate incidental take by harassment by seismic and the numbers of marine mammals that might be affected during the seismic acquisition activity area in the Chukchi and Beaufort seas has been presented in SOI's 2008 IHA application.

In its application, SOI provides estimates of the number of potential ''exposures'' to sound levels equal to or greater than 160 dB re 1 microPa (rms). NMFS clarifies here that, except possibly for bowhead whales, the number of potential exposures calculated by SOI does not necessarily mean that this is the actual number of Level B harassments that would occur. First, exposure estimates do not take

into account variability between species or within a species by activity, age or sex. What this means is that not all animals are expected to react at the same level as its conspecifics, and all species are not expected to react at the same level, as some species in the Arctic will respond to sounds differently, if at all, depending upon whether or not they have good hearing in the same frequency range as seismic. Second, NMFS believes that SOI's use of the maximum density estimates for its requested take authorization (see IHA application and references for details) is overly cautious as it tends to inflate harassment take estimates to an unreasonably high number and is not based on good empirical science. NMFS believes that these inflated numbers have been provided and used by SOI for its Level B harassment take request in an abundance of caution because they present a worst-case estimate. NMFS, on the other hand prefers to use the average density estimate numbers provided in Tables 6–1 through 6–5 in SOI's IHA application as these are the more realistic and scientifically supportable estimates. NMFS notes, for example, that the most comprehensive survey data set on ringed and bearded seals from the central and eastern Beaufort Sea was conducted on offshore pack ice in late spring. Density estimates of ringed and bearded seals were based on counts of seals on the ice during this survey, not in open water where seismic surveys are conducted. Consequently, the density and potential take (exposure) numbers for seals in the Beaufort and Chukchi seas likely overestimate the number of seals that could be encountered and/or exposed to seismic airguns because only animals in the water near the survey area would be exposed to seismic and site clearance activity sound sources. Because seals would be more widely dispersed while in open water, NMFS presumes that animal densities would be less than when seals are concentrated on and near the ice. Compounding that error, SOI calculated the maximum density for seals as 4 times the average density, which NMFS does not believe is supported by the best available science.

The estimates for marine mammal ''exposure'' are based on a consideration of the number of marine mammals that might be appreciably disturbed during approximately 7974 km (4955 mi) of full 3D seismic surveys and approximately 4294 km (2668 mi) of mitigation gun activity in the Chukchi Sea and by approximately 4784 km (2973 mi) of full 3D seismic surveys and approximately 2576 km (1600 mi) of mitigation gun (a single small airgun used when the airgun array is not active to alert marine mammals to the presence of the survey vessel) activity in the Beaufort Sea. In addition to the 3D seismic program, the shallow hazards surveys using a 2 10 in^3 airgun array will be performed along approximately 1237 km (769 mi) in the Beaufort Sea and approximately 432 km (268 mi) in the Chukchi Sea.

NMFS further notes that the close spacing of neighboring tracklines within the planned 3D seismic survey areas results in a limited amount of total area of the Chukchi and Beaufort seas being exposed to sounds ≤ 160 dB while much of the survey area is exposed repeatedly. This means that the number of non-migratory cetaceans and pinnipeds exposed to seismic sounds would be less than if the seismic vessel conducted straight line transects of the sea without turning and returning on a nearby, parallel track. However, these animals may be exposed several times before the seismic vessel moves to a new site. In that regard, NMFS notes that the methodology used by SOI in its ''exposure'' calculations is more valid for seismic surveys that transect long distances, for those surveys that ''mow the lawn'' (that is, remain within a relatively small area, transiting back and forth while shooting seismic). In such situations, the Level B harassment numbers tend to be highly inflated for non-migratory marine mammals, if each ''exposure'' is calculated to be a different animal and not, as here, a relatively small number of animals residing in the area and being ''exposed'' to seismic sounds several times during the season. As a result, NMFS believes that SOI's estimated number of individual exposures does not account for multiple exposures of the same animal (principally non-migratory pinnipeds) instead of single animal exposures as the survey conducts a number of parallel transects of the same area (sometimes called bostrophodontical surveys) and the fact that the mitigation procedures would serve to reduce exposures to affected marine mammals.

As mentioned previously, 3D seismic airgun arrays are composed of identically tuned Bolt-gun sub-arrays operating at 2,000 psi. In general, the signature produced by an array composed of multiple sub-arrays has the same shape as that produced by a single sub-array while the overall acoustic output of the array is determined by the number of sub-arrays employed. The gun arrangement for the 1,049 square inches (in2) sub-array is detailed below and is comprised of three subarrays comprising a total 3,147 in^3 sound source. The anticipated radii of influence of the bathymetric sonars and pinger are less than those for the air gun configurations described in Attachment A in SOI's IHA application. It is assumed that, during simultaneous operations of those additional sound sources and the air gun(s), any marine mammals close enough to be affected by the sonars or pinger would already be affected by the air gun(s). In this event, SOI believes that marine mammals are not expected to exhibit more than short-term and inconsequential responses, and such responses have not been considered to constitute a ''taking.'' Therefore, potential taking estimates only include noise disturbance from the use of air guns. The specifications of the equipment, including site clearance activities, to be used and areas of ensonification are described more fully in SOI's IHA application (see Attachment B in SOI's IHA application).

Cetaceans

For belugas and gray whales in both the Beaufort and Chukchi Seas and bowhead whales in the Chukchi Sea, Moore *et al.* (2000b and c) offer the most current data to estimate densities during summer. Density estimates for bowhead whales in the Beaufort Sea were updated by information provided by Miller *et al.* (2002).

Tables 6–1 and 6–2 (Chukchi Sea) and Tables 6–3 and 6–4 (beluga and bowhead: Beaufort Sea) provide density estimates for the summer and fall, respectively. Table 6–5 provides a summary of the expected densities for cetaceans (other than bowheads and belugas) and pinnipeds during all seasons in the Beaufort Sea.

The number of different individuals of each species potentially exposed to received levels ≤160 dB re 1 microPa (rms) within each survey region, time period, and habitat zone was estimated by multiplying the expected species density, by the anticipated area to be ensonified to the 160–dB level in the survey region, time period, and habitat zone to which that density applies.

The numbers of ''exposures'' were then summed by SOI for each species across the survey regions, seasons, and habitat zones. Some of the animals estimated to be exposed, particularly migrating bowhead whales, might show avoidance reactions before being exposed to ≤160 dB re 1 microPa (rms). Thus, these calculations actually estimate the number of individuals potentially exposed to ≤160 dB that would occur if there were no avoidance of the area ensonified to that level.

For the full–3D airgun array, the cross track distance is 2 x the 160–dB radius

which was measured in 2007 as 8.1 km (5.0 mi) in the Chukchi Sea and 13.4 km (8.3 mi) in the Beaufort Sea. The mitigation gun's 160–dB radius was measured in 2007 at 1370 m (4495 ft) in the Chukchi Sea and Beaufort seas. For shallow hazards surveys to be performed by the *M/V Henry Christofferson*, the 160–dB radius measured in 2007 was equal to 621 m (2037 ft). Using these distances, SOI estimates that the area ensonified in the Chukchi Sea is approximately 15,000 km² and approximately 10,100 km² in the Beaufort Sea.

The estimated numbers of potential marine mammal ''exposures'' by SOI's surveys are presented in Tables 6–6 for the summer/fall period in the Chukchi Sea, Table 6–7 for bowhead and beluga whales in the U.S. Beaufort Sea and in Table 6–8 for marine mammals (other than bowheads and belugas) in the Beaufort Sea (all tables are found in SOI's 2008 IHA application). Table 1 in this document (Table 6–9 in the IHA application) summarizes these exposure estimates based on the 160–dB re 1 microPa (rms) criteria for cetaceans exposed to impulse sounds (such as seismic).

SOI's estimates show that the bowhead whale is the only endangered marine mammal expected to be exposed to noise levels ≥160 dB unless, as expected during the fall migratory period, bowheads avoid the approaching survey vessel before the received levels reach 160 dB. Migrating bowheads are likely to take avoidance measures, though many of the bowheads engaged in other activities, particularly feeding and socializing, probably will not. SOI's estimate of the number of bowhead whales potentially exposed to ≥160 dB is 1540 animals (9 in the Chukchi Sea and 1531 in the Beaufort Sea (see Table 1)). Two other endangered cetacean species that may be encountered in the northern Chukchi/western Beaufort Sea areas, the fin whale and humpback whale, are estimated by SOI to have two exposures each in the Chukchi Sea. However, NMFS believes that at least for the fin whale, no animals would be so exposed given their low ''average'' estimates of densities in the area.

Most of the cetaceans exposed to seismic sounds with received levels ≥160 dB would involve bowhead, gray, and beluga whales, and the harbor porpoise. Average estimates of the number of exposures of cetaceans by 3D seismic surveys (other than bowheads), in descending order, are beluga (298), gray whale (183), and harbor porpoise (58). The regional breakdown of these numbers is shown in Tables 6–6 to 6–8. Estimates for other species are lower (Table 6–9). These estimates are also provided in Table 1 in this **Federal Register** notice.

TABLE 1. SUMMARY OF THE NUMBER OF POTENTIAL EXPOSURES OF MARINE MAMMALS TO RECEIVED SOUND LEVELS IN THE WATER OF ?160 DB DURING SOI'S PROPOSED SEISMIC PROGRAM IN THE CHUKCHI SEA AND BEAUFORT SEA, ALASKA, JULY - NOVEMBER, 2008. NOT ALL MARINE MAMMALS WILL CHANGE THEIR BEHAVIOR WHEN EXPOSED TO THESE SOUND LEVELS, ALTHOUGH SOME MIGHT ALTER THEIR BEHAVIOR SOMEWHAT WHEN LEVELS ARE LOWER (SEE TEXT).

Species	Number of Individuals Exposed to Sound Levels ≥160dB					
	Chukchi Sea		Beaufort Sea		Total	
	Avg.	Max.	Avg.	Max.	Avg.	Max.
Odontocetes						
Monodontidae						
Beluga	63	254	234	938	298	1192
Narwhal	0	0	0	0	0	0
Delphinidae						
Killer whale	2	6	0	0	2	6
Phocoenidae						
Harbor porpoise	57	227	2	6	58	234
Mysticetes						
Bowhead Whale [a]	9	46	1531	1536	1540	1582
Fin whale	2	6	0	0	2	6
Gray whale	182	727	2	6	183	734
Humpback whale	2	6	0	0	2	6
Minke whale	2	6	0	0	2	6
Total Cetaceans	70	281	1533	1543	1603	1824
Pinnipeds						
Bearded seal	270	405	322	1286	592	1691
Ribbon seal	2	6	0	0	2	6
Ringed seal	6951	10827	6305	25221	13256	36047
Spotted seal	361	562	61	243	422	804
Total Pinnipeds	5678	8836	6687	26750	12366	35586

[a] See text for description of bowhead whale estimate for the Beaufort Sea

Pinnipeds

Ringed, spotted, and bearded seals are all associated with sea ice, and most census methods used to determine density estimates for pinnipeds are associated with counting the number of seals hauled out on ice. Correction factors have been developed for most pinniped species that address biases associated with detectability and availability of a particular species. Although extensive surveys of ringed and bearded seals have been conducted in the Beaufort Sea, the majority of the surveys have been conducted over the landfast ice and few seal surveys have been conducted in open water. The most comprehensive survey data set on ringed seals (and bearded seal) from the central and eastern Beaufort Sea was conducted on offshore pack ice in late

spring (Kingsley, 1986). It is important to note that all activities will be conducted during the open-water season and density estimates used here were based on counts of seals on ice. Therefore, densities and potential take numbers will overestimate the numbers of seals that would likely be encountered and/or exposed because only the animals in the water would be exposed to the seismic and clearance activity sound sources.

The ringed seal is the most widespread and abundant pinniped in ice-covered arctic waters and ringed seals are expected to account for the vast majority of marine mammals expected to be encountered, and hence exposed to airgun sounds with received levels ≥160 dB re 1 microPa (rms) during SOI's seismic survey. The average estimate is that 13,256 ringed seals might be exposed to seismic sounds with received levels ≥160 dB. Two additional pinniped species (other than the Pacific walrus) are expected to be encountered. They are the bearded seal (592 exposures), and the spotted seal (422 exposures)(see Table 1 in this document or Table 6–9 in the IHA application). The ribbon seal is unlikely to be encountered during SOI's seismic surveys since their presence is considered rare within the proposed SOI's survey areas.

Potential Marine Mammal Disturbance At Less Than 160 dB Received Levels

As mentioned previously, during autumn seismic surveys in the Beaufort Sea, migrating bowhead whales displayed avoidance (i.e., deflection) at distances out to 20–30 km (12–19 mi) and received sound levels of ~130 dB (rms) (Miller *et al.*, 1999; Richardson *et al.*, 1999). Therefore, it is possible that a larger number of bowhead whales than estimated above may be disturbed to some extent if reactions occur at ≥130 dB (rms).

However, these references note that bowhead whales below the water surface at a distance of 20 km (12.4 mi) from an airgun array received pulses of about 117–135 dB re 1 microPa rms, depending upon propagation. Corresponding levels at 30 km (18.6 mi) were about 107–126 dB re 1 μParms. Miller *et al.* (1999) surmise that deflection may have begun about 35 km (21.7 mi) to the east of the seismic operations, but did not provide SPL measurements to that distance, and noted that sound propagation has not been studied as extensively eastward in the alongshore direction, as it has northward, in the offshore direction. Therefore, while this single year of data analysis indicates that bowhead whales may make minor deflections in swimming direction at a distance of 30–35 km (18.6–21.7 mi), there is no indication that the sound pressure level (SPL) where deflection first begins is at 120 dB- it could be at another SPL lower or higher than 120 dB. Miller *et al.* (1999) also note that the received levels at 20–30 km (12.4–18.6 mi) were considerably lower in 1998 than have previously been shown to elicit avoidance in bowheads exposed to seismic pulses. However, the seismic airgun array used in 1998 was larger than the ones used in 1996 and 1997. Therefore, NMFS believes that it cannot scientifically support adopting any single SPL value below 160 dB and apply it across the board for all species and in all circumstances.

Second, NMFS has noted in the past that minor course changes during migration are not considered a significant behavioral change and, as indicated in MMS' 2006 Final PEA, have not been seen at other times of the year and during other activities. To show the contextual nature of this minor behavioral modification, recent monitoring studies of Canadian seismic operations indicate that when not migrating but involved in feeding, bowhead whales do not move away from a noise source at an SPL of 160 dB. Therefore, while bowheads may avoid an area of 20 km (12.4 mi) around a noise source, when such a determination requires a post-survey computer analysis to find that bowheads have made slight course change, NMFS believes that this does not rise to a level considered to be a significant behavioral response on the part of the marine mammals or under the MMPA, a ''take.'' NMFS therefore continues to estimate ''takings'' under the MMPA from impulse noises, such as seismic, as being at a distance of 160 dB (re 1 μPa). NMFS needs to point out however, that while this might not be a ''taking'' in the sense that there is not a significant behavioral response by bowhead whales, a minor course deflection by bowheads can have a significant impact on the subsistence uses of bowheads. As a result, NMFS still requires mitigation measures to ensure that the activity does not have an unmitigable adverse impact on subsistence uses of bowheads.

Finally, SOI did not conduct seismic operations in the Beaufort Sea during that part of the fall bowhead migration that occurs at the same time as the fall bowhead subsistence hunt. As a result, a proportion of the bowhead population was able to migrate past the Beaufort Sea seismic survey area without being exposed to any seismic sounds. Limiting operations during the fall bowhead whale migration is also meant to reduce any chance of conflicting with subsistence hunting and continues at least until hunting quotas have been filled by the coastal communities.

Potential Impact on Habitat

SOI states that the seismic activities will not result in any permanent impact on habitats used by marine mammals, or to their prey sources. Seismic activities will mostly occur during the time of year when bowhead whales are widely distributed and would be expected to occur in very low numbers within the seismic activity area (mid- to late-July through September). Any effects would be temporary and of short duration at any one place. The primary potential impacts to marine mammals is associated with elevated sound levels from the airguns were discussed previously in this document.

A broad discussion on the various types of potential effects of exposure to seismic on fish and invertebrates can be found in the NMFS/MMS Draft PEIS for Arctic Seismic Surveys (see **ADDRESSES**).

Mortality to fish, fish eggs and larvae from seismic energy sources would be expected within a few meters (0.5 to 3 m (1.6 to 9.8 ft)) from the seismic source. Direct mortality has been observed in cod and plaice within 48 hours that were subjected to seismic pulses two meters from the source (Matishov, 1992), however other studies did not report any fish kills from seismic source exposure (La Bella *et al.*, 1996; IMG, 2002; Hassel *et al.*, 2003). To date, fish mortalities associated with normal seismic operations are thought to be slight. Saetre and Ona (1996) modeled a worst-case mathematical approach on the effects of seismic energy on fish eggs and larvae, and concluded that mortality rates caused by exposure to seismic are so low compared to natural mortality that issues relating to stock recruitment should be regarded as insignificant.

Limited studies on physiological effects on marine fish and invertebrates to acoustic stress have been conducted. No significant increases in physiological stress from seismic energy were detected for various fish, squid, and cuttlefish (McCauley *et al.*, 2000) or in male snow crabs (Christian *et al.*, 2003). Behavioral changes in fish associated with seismic exposures are expected to be minor at best. Because only a small portion of the available foraging habitat would be subjected to seismic pulses at a given time, fish would be expected to return to the area of disturbance anywhere from 15–30 minutes (McCauley *et al.*, 2000) to several days (Engas *et al.*, 1996).

Available data indicates that mortality and behavioral changes do occur within very close range to the seismic source; however, the seismic acquisition activities in the Chukchi and Beaufort seas are predicted by SOI to have a negligible effect to the prey resource of the various life stages of fish and invertebrates available to marine mammals occurring during the project's duration. In addition, it is unlikely that bowheads, gray, or beluga whales will be excluded from any habitat.

Effects of Seismic Noise and Other Related Activities on Subsistence

The disturbance and potential displacement of marine mammals by sounds from seismic activities are the principal concerns related to subsistence use within the Beaufort and Chukchi seas. The harvest of marine mammals (mainly bowhead whales, but also ringed and bearded seals) is central to the culture and subsistence economies of the coastal North Slope and Western Alaskan communities. In particular, if fall-migrating bowhead whales are displaced farther offshore by elevated noise levels, the harvest of these whales could be more difficult and dangerous for hunters. The impact would be that whaling crews would necessarily be forced to travel greater distances to intercept westward migrating whales thereby creating a safety hazard for whaling crews and/or limiting chances of successfully striking and landing bowheads. The harvest could also be affected if bowheads become more skittish when exposed to seismic noise. Hunters relate how bowhead whales also appear ''angry'' due to seismic noise, making whaling more dangerous.

This potential impact on subsistence uses of marine mammals will be mitigated by application of the procedures established in the CAA signed by SOI and the AEWC and the Whaling Captains' Associations of Kaktovik, Nuiqsut, Barrow, Pt. Hope and Wainwright. The CAA resulted in a curtailment of the times and locations of seismic and other noise producing sources during times of active bowhead whale scouting and actual whaling activities within the traditional subsistence hunting areas of the potentially affected communities. (See Mitigation for Subsistence). SOI states that seismic survey activities will also be scheduled to avoid the traditional subsistence beluga hunt which annually occurs in July in the community of Pt. Lay. As a result, SOI believes that there should be no adverse impacts on the availability of whale species for subsistence uses.

In the Chukchi Sea, SOI's seismic work should not have unmitigable adverse impacts on the availability of the whale species for subsistence uses. The whale species normally taken by Inupiat hunters are the bowhead and belugas. SOI's Chukchi Sea seismic operations did not begin until after July 20, 2008 by which time the majority of bowheads will have migrated to their summer feeding areas in Canada. Even if any bowheads remain in the northeastern Chukchi Sea after July 20, they are not normally hunted after this date until the return migration occurs around late September when a fall hunt by Barrow whalers takes place. In recent years, bowhead whales have occasionally been taken in the fall by coastal villages along the Chukchi coast, but the total number of these animals has been small. Seismic operations for the Chukchi Sea seismic program have been timed and located so as to avoid any possible conflict with the Village of Barrow's fall whaling, and specific provisions governing the timing and location have been incorporated into the previously mentioned CAA

Beluga whales may also be taken sporadically for subsistence needs by coastal villages, but traditionally are taken in small numbers very near the coast. However, SOI established ''communication stations'' in the villages to monitor impacts. Gray whales, which will be relatively abundant in the northern Chukchi Sea from spring through autumn are not taken by subsistence hunters.

POC and CAA

Regulations at 50 CFR 216.104(a)(12) require IHA applicants for activities that take place in Arctic waters to provide a POC or information that identifies what measures have been taken and/or will be taken to minimize adverse effects on the availability of marine mammals for subsistence purposes. SOI has summarized concerns received during 2006 and 2007 into the 2007 POC, which was submitted during June 2007 to Federal agencies as well as to subsistence stakeholders, and updated in July 2007 and earlier this year. SOI has carried this multi-year POC forward to address its proposed 2008 activities. SOI has developed the POC to mitigate and avoid any unreasonable interference by SOI's planned activities on North Slope subsistence uses and resources. The POC is the result of numerous meetings and consultations between SOI, affected subsistence communities and stakeholders, and Federal agencies beginning in October 2006 (see Table 12–1 in SOI's IHA application for a list of meetings). The POC identifies and documents potential conflicts and associated measures that will be taken to minimize any adverse effects on the availability of marine mammals for subsistence use. To be effective, SOI believes the POC must be a dynamic document which will expand to incorporate the communications and consultation that will continue to occur throughout 2008. Outcomes of POC meetings are included in quarterly updates attached to the POC and distributed to Federal, state, and local agencies as well as local stakeholder groups.

In regard to the CAA, the AEWC submitted a draft CAA to the industry earlier this spring and was signed by SOI on July 28, 2008. The 2008 CAA incorporated all appropriate measures and procedures regarding the timing and areas of the SOI's planned activities (e.g., times and places where seismic operations will be curtailed or moved in order to avoid potential conflicts with active subsistence whaling and sealing); a communications system between SOI's vessels and whaling and hunting crews (i.e., the communications center will be located in strategic areas); provision for marine mammal observers/Inupiat communicators aboard all project vessels; conflict resolution procedures; and provisions for rendering emergency assistance to subsistence hunting crews. If requested, post-season meetings will also be held to assess the effectiveness of a 2008 CAA between SOI, the AEWC, and the Whaling Captains Associations, to address how well conflicts (if any) were resolved; and to receive recommendations on any changes (if any) might be needed in the implementation of future CAAs. In addition, NMFS has included in SOI's IHA, those mitigation and monitoring measures contained in the CAA that it believes would ensure that SOI's activities will not have an unmitigable impact on subsistence uses of marine mammals.

Mitigation and Monitoring

As part of its application, SOI has implemented a marine mammal mitigation and monitoring program (4MP) that will consist of monitoring and mitigation during SOI's seismic and shallow-hazard survey activities. Monitoring will provide information on the numbers of marine mammals potentially affected by these activities and permit real time mitigation to prevent injury of marine mammals by industrial sounds or activities. These goals will be accomplished by conducting vessel-, aerial-, and acoustic-monitoring programs to characterize the

sounds produced by the seismic airgun arrays and related equipment and to document the potential reactions of marine mammals in the area to those sounds and activities. Acoustic modeling will be used to predict the sound levels produced by the seismic and shallow hazards equipment in the U.S. Beaufort and Chukchi Seas. For SOI's seismic program, acoustic measurements will also be made to establish zones of influence (ZOIs) around the activities that will be monitored by observers. Aerial monitoring and reconnaissance of marine mammals and recordings of ambient sound levels, vocalizations of marine mammals, and received levels should they be detectable using bottom-founded acoustic recorders along the Beaufort Sea coast will be used to interpret the reactions of marine mammals exposed to the activities. The components of SOI's mitigation and monitoring programs are briefly described next. Additional information can be found in SOI's application.

Mitigation Measures

As part of its IHA application, SOI submitted its proposed mitigation and monitoring program for SOI's seismic programs in the Chukchi and Beaufort seas for 2008/2009. SOI notes that the seismic exploration program incorporates both design features and operational procedures for minimizing potential impacts on cetaceans and pinnipeds and on subsistence hunts. Seismic survey design features include: (1) Timing and locating seismic activities to avoid interference with the annual fall bowhead whale hunts; (2) configuring the airgun arrays to maximize the proportion of energy that propagates downward and minimizes horizontal propagation; (3) limiting the size of the seismic energy source to only that required to meet the technical objectives of the seismic survey; and (4) conducting pre-season modeling and early season field assessments to establish and refine (as necessary) the appropriate 180–dB and 190–dB safety zones, and other radii relevant to behavioral disturbance.

The potential disturbance of cetaceans and pinnipeds during seismic operations will be minimized further through the implementation of the following ship-based mitigation measures.

Safety and Disturbance Zones

Safety radii for marine mammals around airgun arrays are customarily defined as the distances within which received pulse levels are greater than or equal to 180 dB re 1 microPa (rms) for cetaceans and greater than or equal to 190 dB re 1 microPa (rms) for pinnipeds. These safety criteria are based on an assumption that seismic pulses at lower received levels will not injure these animals or impair their hearing abilities, but that higher received levels might result in such effects. It should be understood that marine mammals inside these safety zones will not be seriously injured or killed as these zones were established prior to the current understanding that significantly higher levels of impulse sounds would be required before injury or mortality would occur.

In addition, monitoring similar to that conducted in the Chukchi Sea in 2007 is required under SOI's 2008/2009 IHA in the Chukchi and the Beaufort Seas. SOI is required to use MMOs onboard the seismic vessel to monitor the 190- and 180–dB (rms) safety radii for pinnipeds and cetaceans, respectively, and to implement appropriate mitigation as discussed in the proceeding sections. SOI is also required to monitor the 160–dB (rms) marine mammal disturbance zone with MMOs onboard the chase vessels as was done in 2006 and 2007. There has also been concern that received pulse levels as low as 120 dB (rms) may have the potential to disturb some whales. In 2006 and 2007, there was a requirement in the IHAs issued to SOI by NMFS to implement special mitigation measures if specified numbers of bowhead cow/calf pairs might be exposed to seismic sounds greater than 120–dB rms or if large groups (greater than 12 individuals) of bowhead or gray whales might be exposed to sounds greater than or equal to 160 dB rms. In 2007, monitoring of the 120–dB (rms) zone was required in the Beaufort Sea after September 25. As SOI did not conduct seismic surveys in the Chukchi Sea between September 25th and the time ice prevented additional work in the Beaufort Sea (around October 10th), NMFS determined that SOI will not need to monitor the 120–dB (rms) zone in the Chukchi Sea in 2008 as the bowhead whale cow/calf migration period will have been substantially completed by that time. However, even if SOI had intended to operate during the timeframe immediately after September 25th, monitoring to the 120 dB for cow/calf pairs would not be required because NMFS has also determined aerial monitoring to the 120–dB isopleth in the Chukchi Sea was impracticable due to safety concerns.

During the 2006 and 2007 seismic programs in the Chukchi and Beaufort Seas, SOI utilized a combination of pre-season modeling and early season sound source verification to establish safety zones for these sound level criteria. As the equipment being utilized in 2008 is the same as that used in the 2006 and 2007 field seasons, and the majority of locations where seismic data is to be acquired were modeled prior to the 2006 and 2007 seasons, SOI was authorized under the IHA to initially utilize the derived (measured) sound criterion distances from 2006. In addition, any locations not modeled previously will be modeled prior to 2008 survey initiation and mitigation distances and safety zones adjusted up, if necessary following sound measurements at the new locations. Modeling of the sound propagation is based on the size and configuration of the airgun array and on available oceanographic data. An acoustics contractor will perform the direct measurements of the received levels of underwater sound versus distance and direction from the airgun arrays using calibrated hydrophones. The acoustic data were analyzed and incorporated within the time period specified in the IHA and CAA. The mitigation measures implemented in 2008/2009 include ramp-ups, power-downs, and shut-downs as described next.

Ramp-Up

A ramp-up of an airgun array provides a gradual increase in sound levels, and involves a step-wise increase in the number and total volume of airguns firing until the full volume is achieved. The purpose of a ramp-up (or ''soft start'') is to ''warn'' cetaceans and pinnipeds in the vicinity of the airguns and to provide time for them to leave the area and thus avoid any potential injury or impairment of their hearing abilities. During the 2008/2009 seismic program, SOI is required to ramp-up the airgun arrays slowly, at a rate no greater than 6 dB/5 minute period. Full ramp-ups (i.e., from a cold start after a shut-down, when no airguns have been firing) will begin by firing a small airgun in the arrays. Also, the minimum shut-down period, (i.e., without air guns firing), which must be followed by a ramp-up is the amount of time it would take the source vessel to cover the 180–dB safety radius.

A full ramp-up, after a shut-down, cannot begin until there has been a minimum of a 30–minute period of observation by MMOs of the safety zone to assure that no marine mammals are present. The entire safety zone must be visible during the 30–minute leading up to a full ramp-up. If the entire safety zone is not visible, then ramp-up from a cold start cannot begin. If a marine mammal(s) is sighted within the safety

zone during the 30–minute watch prior to ramp-up, ramp-up will be delayed until the marine mammal(s) is sighted outside of the safety zone or the animal(s) is not sighted for at least 15–30 minutes: 15 minutes for small odontocetes and pinnipeds, or 30 minutes for baleen whales and large odontocetes.

During periods of turn around and transit between seismic transects, at least one airgun may remain operational to alert marine mammals in the area of the vessel's location. The ramp-up procedure still will be followed when increasing the source levels from one air gun to the full arrays. Moreover, keeping one air gun firing will avoid the prohibition of a cold start during darkness or other periods of poor visibility. Through use of this approach, seismic operations can resume upon entry to a new transect without a full ramp-up and the associated 30–minute lead-in observations. MMOs will be on duty whenever the airguns are firing during daylight, and during the 30–min periods prior to ramp-ups as well as during ramp-ups. Daylight will occur for 24 hr/day until mid-August, so until that date MMOs will automatically be observing during the 30–minute period preceding a ramp-up. Later in the season, MMOs will be called out at night to observe prior to and during any ramp-up. The seismic operator and MMOs will maintain records of the times when ramp-ups start, and when the airgun arrays reach full power.

Power-downs and Shut-downs

A power-down is the immediate reduction in the number of operating airguns from all guns firing to some smaller number. A shut-down is the immediate cessation of firing of all airguns. The airgun arrays will be immediately powered down whenever a marine mammal is sighted approaching close to or within the applicable safety zone of the full airgun arrays (i.e., 180 dB rms for cetaceans, 190 dB rms for pinnipeds), but is outside the applicable safety zone of the single airgun. If a marine mammal is sighted within the applicable safety zone of the single airgun, the airgun array will be shut-down (i.e., no airguns firing). Although observers will be located on the bridge ahead of the center of the airgun array, the shut-down criterion for animals ahead of the vessel will be based on the distance from the bridge (vantage point for MMOs) rather than from the airgun array - a precautionary approach. For marine mammals sighted alongside or behind the airgun array, the distance is measured from the array.

Operations at Night and in Poor Visibility

When operating under conditions of reduced visibility attributable to darkness or to adverse weather conditions, infra-red or night-vision binoculars will be available and required to be used. However, it is recognized that their effectiveness is limited. For that reason, MMOs will not routinely be on watch at night, except in periods before and during ramp-ups. It should be noted that if one small airgun remains firing, the rest of the array can be ramped up during darkness or in periods of low visibility. Seismic operations may continue under conditions of darkness or reduced visibility.

Determination on Mitigation

NMFS believes that the combination of use of the mitigation gun, ramp-up of the seismic airgun array and the slow vessel speed (to allow marine mammals sufficient time to take necessary avoidance measures), the use of trained marine mammal observers and shut-down procedures (to avoid potential injury if the animal is close to the vessel), and the behavioral response of marine mammals (especially bowhead whales) to avoid areas of high anthropogenic noise all provide protection to marine mammals from serious injury or mortality. As a result, NMFS believes that it is not necessary to require termination of survey activities during darkness or reduced visibility and that the current level of mitigation will achieve the least practicable impact on marine mammal species or stocks result.

Marine Mammal Monitoring

SOI will implement a marine mammal monitoring program (4MP) to collect data to address the following specific objectives: (1) improve the understanding of the distribution and abundance of marine mammals in the Chukchi and Beaufort sea project areas; (2) understand the propagation and attenuation of anthropogenic sounds in the waters of the project areas; (3) determine the ambient sound levels in the waters of the project areas; and (4) assess the effects of sound on marine mammals inhabiting the project areas and their distribution relative to the local people that depend on them for subsistence hunting.

These objectives and the monitoring and mitigation goals will be addressed by: (1) vessel-based MMOs on the seismic source and other support vessels; (2) an acoustic program to predict and then measure the sounds produced by the seismic operations and the possible responses of marine mammals to those sounds; (3) an aerial monitoring and reconnaissance of marine mammals available for subsistence harvest along the Chukchi Sea coast; and (4) bottom-founded autonomous acoustic recorder arrays along the Alaskan coast and offshore in the Chukchi and Beaufort seas to record ambient sound levels, vocalizations of marine mammals, and received levels of seismic operations should they be detectable.

Seismic Source Vessel-based Visual Monitoring

SOI is required to deploy and utilize a specified number of MMOs on each of the seismic source vessels to meet the following criteria: (1) 100 percent monitoring coverage during all periods of seismic operations in daylight and for the 30 minutes prior to starting ramp-up and for the number of minutes required to reach full ramp-up; (2) coverage during darkness for 30–minutes before and during ramp-ups (provided MMOs verify that they can clearly see the entire safety zone); (3) maximum of 4 consecutive hours on watch per MMO; (4) maximum of approximately 12 hours on watch per day per MMO with no other shipboard duties; and (5) two-MMO coverage during ramp-up and the 30 minutes prior to full ramp-ups and for as large a fraction of the other operating hours as possible.

To accomplish these tasks SOI is required to have three to five MMOs (including one Inupiat observer/communicator) based aboard the seismic vessel. However, NMFS does not consider Inupiat observers to be included in the required minimum number of MMOs unless they have undergone MMO training at a facility approved in advance by NMFS. MMOs will search for and observe marine mammals whenever seismic operations are in progress and for at least 30 minutes before the planned start of seismic transmissions or whenever the seismic array's operations have been suspended for more than 10 minutes. The MMOs will scan the area immediately around the vessels with reticle binoculars during the daytime. Laser rangefinding equipment will be available to assist with distance estimation. After mid-August, when the duration of darkness increases, image intensifiers will be used by observers and additional light sources may be used to illuminate the safety zone.

The seismic vessel-based work will provide the basis for real-time mitigation (airgun power-downs and, as necessary, shut-downs), as called for by

the IHA; information needed to estimate the ''take'' of marine mammals by harassment, which must be reported to NMFS; data on the occurrence, distribution, and activities of marine mammals in the areas where the seismic program is conducted; information to compare the distances, distributions and behavior; movements of marine mammals relative to the source vessels at times with and without seismic activity; a communication channel to Inupiat whalers through the Communications Coordination Center in coastal villages; and continued employment and capacity building for local residents, with one objective being to develop a larger pool of experienced Inupiat MMOs.

The use of four or more MMOs allows two observers to be on duty simultaneously for up to 50 percent of the active airgun hours. The use of two observers increases the probability of detecting marine mammals, and two observers will be on duty for the entire duration of time whenever the seismic array is ramped up. As mentioned previously, individual watches will be limited to no more than 4 consecutive hours to avoid observer fatigue (and no more than 12 hours on watch per 24 hour day). When mammals are detected within or about to enter the safety zone designated to prevent injury to the animals (see Mitigation), the geophysical crew leader will be notified so that shutdown procedures can be implemented immediately. Details of the vessel-based marine mammal monitoring program are described in SOI's IHA application (see Appendix B).

Chase Boat Monitoring

MMOs will also be present on smaller support vessels that travel with the seismic source vessel. These support vessels are commonly known as ''guard boats'' or ''chase boats.'' During seismic operations, a chase boat remains very near to the stern of the source vessel anytime that a member of the source vessel crew is on the back deck deploying or retrieving equipment related to the seismic array. Once the seismic array is deployed the chase boat then serves to keep other vessels away from the seismic source vessel and the seismic array itself (including hydrophone streamer) during production of seismic data and provide additional emergency response capabilities.

In the Chukchi and Beaufort seas in 2008, SOI's seismic source vessel will have one associated chase boat and possibly an additional supply vessel. The chase boat and supply vessel (if present) will have three MMOs onboard to collect marine mammal observations and to monitor the 160 dB (rms) disturbance zone from the seismic airgun array. MMOs on the chase boats will be able to contact the seismic ship if marine mammals are sited. To maximize the amount of time during the day that an observer is on duty, two observers aboard the chase boat or supply vessel will rarely work at the same time. As on the source vessels, shifts will be limited to 4 hrs in length and 12 hrs total in a 24 hr period.

SOI is required to monitor the 160–dB (rms) disturbance radius in 2008 using MMOs onboard the chase vessel. The 160–dB radius in the Chukchi Sea in 2007 and 2008 was determined by JASCO (2007, 2008)) to extend broadside of the vessel to ~8.1 km (5.0 mi) and 12.3 km (7.6 mi) from the airgun source on the *M/V Gilavar* in 2007 and 2008, respectively. In the Beaufort Sea, the 160–dB radius was measured at 13.45 km (8.4 mi)in 2007 and 9.0 km (5.6 mi) in 2008 (JASCO, 2007, 2008). This area around the seismic vessel was monitored by MMOs onboard the *M/V Gulf Provider* (the chase boat used in 2006 and 2007 operations). As in 2007, the *M/V Gulf Provider* will travel ~8 km (5 mi) ahead and to the side of the *M/V Gilavar* as it monitors the 260–dB zone. MMOs onboard the *M/V Gulf Provider* will search the area ahead of the *M/V Gilavar* within the 160–dB zone for marine mammals. Every 8 km (5 mi) or so, the *M/V Gulf Provider* will move to the other side of the M/V Gilivar continuing in a stair-step type pattern. The distance at which the *M/V Gulf Provider* (or other equivalent vessel) travels ahead of the *M/V Gilavar* will be determined by the measured 160–dB radius. Mitigation (i.e., shut-down of the airgun array) will be implemented if a group of 12 or more bowhead or gray whales enter the 160–dB zone. SOI will use this same protocol in the Beaufort Sea after the 160–dB radius has been determined.

The measured distance to the 180–dB isopleth ranges from about 2.45 km (1.5 mi) in the Chukchi Sea to about 2.2 km (1.4 mi) in the Beaufort Sea near the Sivulliq prospect. For 2008, SOI decided to use an additional vessel to monitor this zone given its importance in protecting marine mammals from potential injury associated with exposure to seismic pulses.

Aerial Survey Program

SOI conducted an aerial survey program in support of the seismic exploration program in the Beaufort Sea during summer and fall of 2008. The objectives of the aerial survey are to: (1) to advise operating vessels as to the presence of marine mammals in the general area of operation; (2) to provide mitigation monitoring (120 dB zones) as may be required under the conditions of the IHA; (3) to collect and report data on the distribution, numbers, movement and behavior of marine mammals near the seismic operations with special emphasis on migrating bowhead whales; (4) to support regulatory reporting and Inupiat communications related to the estimation of impacts of seismic operations on marine mammals; (5) to monitor the accessibility of bowhead whales to Inupiat hunters and (6) to document how far west of seismic activities bowhead whales travel before they return to their normal migration paths, and if possible, to document how far east of seismic operations the deflection begins.

The same aerial survey design is required to be implemented during the summer (August) and fall (late August-October) period, but during the summer, the survey grid was flown twice a week, and during the fall, flights will be conducted daily. During the early summer, few cetaceans are expected to be encountered in the nearshore Alaskan Beaufort Sea where seismic surveys will be conducted. Those cetaceans that are encountered are expected to be either along the coast (gray whales: (Maher, 1960; Rugh and Fraker, 1981; Miller *et al.*, 1999; Treacy, 2000) or seaward of the continental shelf among the pack ice (bowheads: Moore *et al.*, 1989b; Miller *et al.*, 2002; and belugas: Moore *et al.*, 1993; Clark *et al.*, 1993; Miller *et al.*, 1999) north of the area where seismic surveys are to be conducted. During some years a few gray whales are found feeding in shallow nearshore waters from Barrow to Kaktovik but most sightings are in the western part of that area.

During the late summer and fall, the bowhead whale is the primary species of concern, but belugas and gray whales are also present. Bowheads and belugas migrate through the Alaskan Beaufort Sea from summering areas in the central and eastern Beaufort Sea and Amundsen Gulf to their wintering areas in the Bering Sea (Clarke *et al.*, 1993; Moore *et al.*, 1993; Miller *et al.*, 2002). Some bowheads are sighted in the eastern Alaskan Beaufort Sea starting mid-August and near Barrow starting late August but the main migration does not start until early September.

The aerial survey procedures will be generally consistent with those during earlier industry studies (Miller *et al.*, 1997, 1998, 1999; Patterson *et al.*, 2007). This will facilitate comparison and pooling of data where appropriate. However, SOI notes that the specific

survey grids will be tailored to SOI's operations and the time of year. Information on survey procedures can be found in SOI's IHA application.

Survey Design in the Beaufort Sea in Summer

The main species of concern in the Beaufort Sea is the bowhead whale but smaller numbers of belugas, and in some years, gray whales, are present in the Beaufort Sea during summer (see above). Few bowhead whales are expected to be found in the Beaufort Sea during early August; however, a reduced aerial survey program will be conducted during the summer prior to seismic operations to confirm the distribution and numbers of bowheads, gray whales and belugas, because no recent surveys have been conducted at this time of year. The few bowheads that were present in the Beaufort Sea during summer in the late 1980s were generally found among the pack ice in deep offshore waters of the central Beaufort Sea (Moore and DeMaster, 1998; Moore *et al.*, 2000). Although gray whales were rarely sighted in the Beaufort Sea prior to the 1980s (Rugh and Fraker, 1981), sightings appear to have become more common along the coast of the Beaufort Sea in summer and early fall (Miller *et al.*, 1999; Treacy 1998, 2000, 2002; Patterson *et al.*, 2007) possibly because of increases in the gray whale population and/or reductions in ice cover in recent years. Because no summer surveys have been conducted in the Beaufort Sea since the 1980s, the information on summer distribution of cetaceans will be valuable for planning future seismic or drilling operations. The grid that was flown in the summer was essentially the same grid flown later in the year, but it was flown twice a week instead of daily. If cetaceans are encountered in the vicinity of planned seismic operations, then SOI will fly the survey grid proposed for later in the season, rather than the early-season survey plan. Surveys were conducted 2 days/week until the period one week prior to the start of seismic operations in the Beaufort Sea (early September). Approximately one week prior to the start of seismic operations, daily surveys were begun using the grid shown in Figure 3 in Appendix B of SOI's IHA application. Exact dates for activities will be provided in SOI's 90–day report, due later this year.

Survey Design in the Beaufort Sea in Fall

Aerial surveys flown during the late August-October period were designed to provide mitigation monitoring as required under by the IHA. For example, mitigation monitoring is required under SOI's IHA to ensure that 4 or more mother-calf bowhead pairs do not approach to within the 120 dB re 1 microPa (rms) radius from the active seismic operation. However, priority is given to mitigation monitoring to the east of the seismic operation (see Appendix B, Figure 2 in SOI's 2008 IHA application). SOI suggests, that, if permitted by the IHA, it is prepared to conduct some surveys to collect data on the extent of westward deflection while still monitoring the 120–dB radius to the east of the seismic operation. These surveys are necessary to obtain detailed data (weather permitting) on the occurrence, distribution, and movements of marine mammals, particularly bowhead whales, within an area that extends about 100 km (62 mi) to the east of the primary seismic vessel to a few km west of it, and north to about 65 km (40 mi) offshore. A westward emphasis would obtain the same data for an area about 100 km (62 mi) to the west of the primary seismic vessel and about 20 km (12 mi) east of it; again about 65 km (40 mi) offshore. This site-specific survey coverage will complements the simultaneous MMS/NMFS National Marine Mammal Laboratory Bowhead Whales Aerial Survey Program (BWASP) survey coverage of the broader Beaufort Sea area.

The survey grid will provide data both within and beyond the anticipated immediate zone of influence of the seismic program, as identified by Miller *et al.* (1999). Miller *et al.* (1999) were not able to determine how far upstream and downstream (i.e., east and west) of the seismic operations bowheads began deflecting and then returned to their ''normal'' migration corridor. That is an important concern for the Inupiat whalers. SOI notes that the survey grid is not able to address that concern because of the need to extend flights well to the east to detect mother-calf pairs before they are exposed to seismic sounds greater than 120 dB re 1 μPa.

If, due to ice or other operational restrictions, SOI may modify the aerial survey grid in order to maintain aerial observations to 100 km (62 mi) east (or west) of the seismic survey area. This is necessary because the total km/mi of aerial survey that can be conducted each day is limited by the fuel capacity of the aircraft. The only alternative to ensure adequate aerial survey coverage over the entire area where seismic activities might influence bowhead whale distribution is to space the individual transects farther apart. For each 15–20 km (9.3–12.4 mi) increase in the east-west size of the seismic survey area, the spacing between lines will need to be increased by 1 km (0.62 mi) to maintain survey coverage from 100 km (62 mi) east to 20 km (12.4 mi) west of the seismic activities (or vice versa). Data from the easternmost transects of the survey grid will document the main bowhead whale migration corridor east of the seismic exploration area and will provide the baseline data on the location of the migration corridor relative to the coast.

SOI did not fly a smaller ''intensive'' survey grid in 2008 (and the current IHA will expire prior to this activity in 2009). In previous years, a separate grid of 4–6 shorter transects was flown, whenever possible, to provide additional survey coverage within about 20 km (12.4 mi) of the seismic operations. This coverage was designed to provide additional data on marine mammal utilization of the actual area of seismic exploration and immediately adjacent waters. The 1996–98 studies showed that bowhead whales were almost entirely absent from the area within 20 km (12.4 mi) of the active seismic operation (Miller *et al.* 1997, 1998, 1999). Thus, the flying-time that (in the past) would have been expended on flying the intensive grid will be used to extend the coverage farther to the east and west of the seismic activity.

Depending on the distance offshore where seismic is being conducted, the survey grid may not extend far enough offshore to document whales which could potentially deflect north of the operation. In this case, SOI would extend the north ends of the transects farther north so that they extend 30–35 km (19–22 mi) north of the seismic operation and the two most westerly (or easterly depending upon the survey design) lines will not be surveyed. This means that the survey lines will only extend as far west as the seismic operation or start as far east as the seismic operations. SOI states that it is not possible to move the grid north without surveying areas south of the seismic operation because some whales may deflect south of the seismic operation and that deflection must be monitored.

Aerial survey coverage of the area of most recent seismic operations continued for several days after seismic surveys by the M/V Gillavar ended on October 10, 2008. This survey provided ''post-seismic'' data on whale distribution for comparison with whale distribution during seismic periods. These data will be used in analyses to estimate the extent of deflection during seismic activities and the duration of any potential deflection after surveys are completed.

The survey grid patterns for summer and fall time periods are described in detail in SOI's IHA application.

Joint Industry Studies Program

Chukchi Sea Coastal Aerial Survey

The only recent aerial surveys of marine mammals in the Chukchi Sea were conducted along coastal areas of the Chukchi Sea to approximately 20 nmi (37 km) offshore in 2006 and 2007 in support of SOI's summer seismic exploration. These surveys provided data on the distribution and abundance of marine mammals in nearshore waters of the Chukchi Sea. Population sizes of several species found they may have changed considerably since earlier surveys were conducted and their distributions may have changed because of changes in ice conditions. SOI will conduct an aerial survey program in the Chukchi Sea in 2008 that will be similar to the 2006 and 2007 programs.

Alaskan Natives from several villages along the east coast of the Chukchi Sea hunt marine mammals during the summer and Native communities are concerned that offshore oil and gas development activities such as seismic exploration may negatively impact their ability to harvest marine mammals. Of particular concern is the potential impact on the beluga harvest at Point Lay and on future bowhead harvests at Point Hope, Wainwright and Barrow. Other species of concern in the Chukchi Sea include the gray whale, bearded, ringed, and spotted seals, and walrus. The gray whale is expected to be one of the most numerous cetacean species encountered during the summer seismic activities, although beluga whales and harbor porpoise may also occur in the area. The ringed seal is likely to be the most abundant pinniped species. The current aerial survey program has been designed to collect distribution data on cetaceans but will be limited in its ability to collect similar data on pinnipeds because of aircraft altitude.

The aerial survey program will be conducted in support of the SOI seismic program in the Chukchi Sea during summer and fall of 2008/2009. The objectives of the aerial survey will be (1) to address data deficiencies in the distribution and abundance of marine mammals in coastal areas of the eastern Chukchi Sea; and (2) to collect and report data on the distribution, numbers, orientation and behavior of marine mammals, particularly beluga whales, near traditional hunting areas in the eastern Chukchi Sea.

Aerial surveys of coastal areas to approximately 20 mi (37 km) offshore between Point Hope and Point Barrow began in early- to mid-July and will continue until mid-November or until seismic operations in the Chukchi Sea are completed. Weather and equipment permitting, surveys will be conducted twice per week during this time period. In addition, during the 2008/2009 field season, SOI will coordinate and cooperate with the aerial surveys conducted by NMFS' National Marine Mammal Laboratory for MMS and any other groups conducting surveys in the same region. For a description of the aerial survey procedures, please see SOI's IHA application.

Acoustic ''Net'' Array: Chukchi Sea

The acoustic ''net'' array used during the 2008 field season in the Chukchi Sea was designed to accomplish two main objectives. The first was to collect information on the occurrence and distribution of beluga whales that may be available to subsistence hunters near villages located on the Chukchi Sea coast. The second objective was to measure the ambient noise levels near these villages and record received levels of sounds from seismic survey activities further offshore in the Chukchi Sea.

The net array configuration used in 2007 deployed again in 2008. The basic components are 30 ocean bottom hydrophones (OBH) systems. Two separate deployments with different placement configurations are planned. The first deployment will occur in mid-July immediately following the beluga hunt and will be adjusted to avoid any interference with the hunt. The initial net array configuration will include and extend the 2006 configuration (see Figures 8 and 9 in Appendix B of SOI's application for number of OBHs and locations for the two deployments). These offshore systems will capture seismic exploration sounds over large distances to help characterize the sound transmission properties of larger areas of the Chukchi Sea.

A second deployment occurred in late August at the same time that all currently deployed systems will be recovered for battery replacement and data extraction. The second deployment emphasized the offshore coverage out to 72 degrees North (80 nm north of Wainwright, 150 nm (172 mi; 278 km) north of Point Lay, and 180 nm (207mi; 333 km) north of Cape Lizbourne. The primary goal of extending the arrays further offshore later in the season is to obtain greater coverage of the central Chukchi Sea to detect vocalization from migrating bowheads starting in September. The specific geometries and placements of the arrays are primarily driven by the objectives of (a) detecting the occurrence and approximate offshore distributions of belugas and possibly bowhead whales during the July to mid-August period and primarily by bowhead whales during the mid-August to late-October period, (b) measuring ambient noise, and (c) measuring received levels of seismic survey activities. Timing of deployment and final positions will b subject to weather and ice conditions, based on consultation with local villages, and carried out to minimize any interference with subsistence hunting or fishing activities.

Additionally, a set of 4 to 6 OBH systems were scheduled to be deployed near the end of the season to collect data throughout the winter.

Acoustic Array: Beaufort Sea

In addition to the continuation of the acoustic net array program in the Chukchi Sea in 2008/2009, SOI also continued a program to deploy directional acoustic recording systems in the Beaufort Sea. The purpose of the array will be to further understand, define, and document sound characteristics and propagation resulting from offshore seismic and other industry operations that may have the potential to cause deflections of bowhead whales from anticipated migratory pathways. Of particular interest will be the east-west extent of deflection (i.e. how far east of a sound source do bowheads begin to deflect and how far to the west beyond the sound source does deflection persist). Of additional interest will be the extent of offshore deflection that occurs.

In previous work around seismic and drill-ship operations in the Alaskan Beaufort Sea, the primary method for studying this issue has been aerial surveys. Acoustic localization methods provide a supplementary method for addressing these questions. As compared with aerial surveys, acoustic methods have the advantage of providing a vastly larger number of whale detections, and can operate day or night, independent of visibility, and to some degree independent of ice conditions and sea state-all of which prevent or impair aerial surveys. However, acoustic methods depend on the animals to call, and to some extent assume that calling rate is unaffected by exposure to industrial noise. Bowheads do call frequently in the fall, but there is some evidence that their calling rate may be reduced upon exposure to industrial sounds, complicating interpretation. The combined use of acoustic and aerial survey methods will provide information about these issues.

SOI contracted with JASCO to conduct the whale acoustic monitoring

program using the passive acoustics techniques developed and used successfully since 2001 for monitoring the bowhead migration past BP's Northstar oil production facility northwest of Prudhoe Bay. Those techniques involve using directional autonomous seafloor acoustic recorders (DASARs) to measure the arrival angles of bowhead calls at known locations, then triangulating to locate the calling whale. Thousands, in some years tens of thousands, of whale calls have been located each year since 2001. The 2008/2009 study will use a new model of the DASAR similar to those deployed in 2007. Figure 11 in Appendix B of SOI's IHA application shows potential locations of the DASARs. The results of these data will be used to determine the extent of deflection of migrating bowhead whales from the sound sources. More information on DASARs and this part of SOI's monitoring program can be found in SOI's IHA application.

Additional Mitigation and Monitoring Measures

In addition to the standard mitigation and monitoring measures mentioned previously, the IHA issued to SOI requires SOI to undertake additional mitigation/monitoring measures (such as expanded monitoring-safety zones for bowhead and gray whales, and having those zones monitored effectively) to ensure that impacts on marine mammals are at the lowest level practicable. The additional mitigation measures are specific to the SOI seismic project, in part because SOI incorporated monitoring measures in the 4MP document that makes this monitoring practicable. It should be recognized that these mitigation/monitoring measures do not establish NMFS policy applicable to other projects or other locations under NMFS' jurisdiction, as each application for an IHA is context-specific. These measures have been developed based upon available data specific to the project areas. NMFS and MMS intend to collect additional information from all sources, including industry, non-governmental organizations, Alaska Natives and other Federal and state agencies regarding measures necessary for effectively monitoring marine mammal populations, assessing impacts from seismic on marine mammals, and determining practicable measures for mitigating those impacts. MMS and NMFS anticipate that mitigation measures applicable to future seismic and other activities may change and evolve based on newly-acquired data.

Reporting

Daily Reporting

SOI will collect, via the aerial flights, unanalyzed bowhead sighting and flightline data which will be exchanged between MMS and SOI on a daily basis during the field season. NMFS recommends that each team submit its sighting information to NMFS in Anchorage each day. After the SOI and MMS data files have been reviewed and finalized, they will be shared in digital form.

Interim Report

The results of the 2008 SOI vessel-based monitoring, including estimates of take by harassment, will be presented in the ''90 day'' and final Technical Report as required by NMFS in the IHAs. SOI's Technical Report will include: (1) summaries of monitoring effort: total hours, total distances, and distribution through study period, sea state, and other factors affecting visibility and detectability of marine mammals; (2) analyses of the effects of various factors influencing detectability of marine mammals: sea state, number of observers, and fog/glare; (3) species composition, occurrence, and distribution of marine mammal sightings including date, water depth, numbers, age/size/gender categories, group sizes, and ice cover; (4) sighting rates of marine mammals versus operational state (and other variables that could affect detectability); (5) initial sighting distances versus operational state; (6) closest point of approach versus seismic state; (7) observed behaviors and types of movements versus operational state; (8) numbers of sightings/individuals seen versus operational state; (9) distribution around the drilling vessel and support vessels versus operational state; and (10) estimates of take based on (a) numbers of marine mammals directly seen within the relevant zones of influence (160 dB, 180 dB, 190 dB (if SPLs of that level are measured)), and (b) numbers of marine mammals estimated to be there based on sighting density during daytime hours with acceptable sightability conditions. This report will be due 90 days after termination of the 2008 open water season and will include the results from any seismic work conducted in the Chukchi/Beaufort Seas in 2008 under the previous IHA.

Comprehensive Monitoring Reports

In November 2007, SOI (in coordination and cooperation with other Arctic seismic IHA holders) released a final, peer-reviewed edition of the 2006 Joint Monitoring Program in the Chukchi and Beaufort Seas, July-November 2006 (LGL, 2007). This report is available for downloading on the NMFS website (see **ADDRESSES**). A draft comprehensive report for 2007 was provided to NMFS and those attending the NMFS/MMS Arctic Ocean open water meeting in Anchorage, AK on April 14–16, 2008. Based on reviewer comments made at that meeting, SOI is currently revising this report and plans to make it available to the public shortly.

Following the 2008 open water season, a comprehensive report describing the acoustic, vessel-based, and aerial monitoring programs will be prepared. The 2008 comprehensive report will describe the methods, results, conclusions and limitations of each of the individual data sets in detail. The report will also integrate (to the extent possible) the studies into a broad based assessment of industry activities and their impacts on marine mammals in the Beaufort Sea during 2008 (work conducted in 2009 under the 2008/2009 IHA will be analyzed in a 2009 comprehensive report). The 2008 report will form the basis for future monitoring efforts and will establish long term data sets to help evaluate changes in the Beaufort/Chukchi Sea ecosystems. The report will also incorporate studies being conducted in the Chukchi Sea and will attempt to provide a regional synthesis of available data on industry activity in offshore areas of northern Alaska that may influence marine mammal density, distribution and behavior.

This comprehensive report will consider data from many different sources including two relatively different types of aerial surveys; several types of acoustic systems for data collection (net array, passive acoustic monitoring, vertical array, and other acoustical monitoring systems that might be deployed), and vessel based observations. Collection of comparable data across the wide array of programs will help with the synthesis of information. However, interpretation of broad patterns in data from a single year is inherently limited. Much of the 2008 data will be used to assess the efficacy of the various data collection methods and to establish protocols that will provide a basis for integration of the data sets over a period of years.

ESA

Under section 7 of the ESA, NMFS has completed consultation with the MMS on ''Oil and Gas Leasing and Exploration Activities in the U.S. Beaufort and Chukchi Seas, Alaska; and Authorization of Small Takes Under the

Marine Mammal Protection Act.'' In a Biological Opinion (BiOp) issued on July 17, 2008, NMFS concluded that the issuance of seismic survey permits by MMS and the authorization of small takes under the MMPA for seismic surveys are not likely to jeopardize the continued existence of the endangered fin, humpback, or bowhead whale. As no critical habitat has been designated for these species; none will be affected. The 2008 BiOp takes into consideration all oil and gas related activities that are reasonably likely to occur, including exploratory (but not production) oil drilling activities. A copy of the BiOp is available at: *http://www.mms.gov/alaska/ref/BiOpinions*.

In addition, NMFS has issued an Incidental Take Statement under this BiOp which contains reasonable and prudent measures with implementing terms and conditions to minimize the effects of take of bowhead whales.

National Environmental Policy Act (NEPA)

In 2006, the MMS prepared Draft and Final Programmatic Environmental Assessments (PEAs) for seismic surveys in the Beaufort and Chukchi Seas. Availability of the Draft and Final PEA was noticed by NMFS in several **Federal Register** notices regarding issuance of IHAs to SOI and others. NMFS was a cooperating agency in the preparation of the MMS PEA. On November 17, 2006, NMFS and MMS announced that they were jointly preparing a Draft Programmatic Environmental Impact Statement (Draft PEIS) to assess the impacts of MMS' annual authorizations under the Outer Continental Shelf (OCS) Lands Act to the U.S. oil and gas industry to conduct offshore geophysical seismic surveys in the Chukchi and Beaufort seas off Alaska, and NMFS' authorizations under the MMPA to incidentally harass marine mammals while conducting those surveys. On March 30, 2007, the Environmental Protection Agency (EPA) noticed the availability for comment of the NMFS/MMS Draft PEIS. Because NMFS has been unable to complete the Final PEIS, it was determined that the 2006 PEA would need to be updated in order to meet NMFS' NEPA requirement. This approach was warranted as it was reviewing five proposed Arctic seismic survey IHAs for 2008, well within the scope of the PEA's eight consecutive seismic surveys. To update the 2006 Final PEA, NMFS has prepared an SEA which incorporates by reference the 2006 Final PEA and other related documents.

In conclusion, the NMFS Office of Protected Resources has determined that the MMS 2006 Final PEA (which NMFS adopted) and the NMFS 2008 Supplemental EA for 2008 accurately and completely describe the NMFS selected action alternative, reasonable additional alternatives, and the potential impacts on marine mammals, endangered species, other marine life and native subsistence lifestyles that could be impacted by the selected alternative and the other alternatives. As a result of our review and analysis, we have determined that it is not necessary to prepare and issue an environmental impact statement for the issuance of an IHA to Shell for seismic activities in the Chukchi and Beaufort seas in 2008/2009.

Determinations

Based on the information provided in SOI's application, this document, the MMS 2006 Final PEA for Arctic Seismic Surveys, the 2006 and 2007 Comprehensive Monitoring Reports by SOI and other reports, NMFS' 2008 Final Supplemental EA, and other relevant documents, NMFS has determined that the impact of SOI conducting seismic surveys in the northern Chukchi Sea and eastern and central Beaufort Sea in 2008/2009 will have no more than a negligible impact on marine mammals and that there will not be any unmitigable adverse impacts to subsistence communities, provided the mitigation measures described in this document are implemented (see Mitigation).

For reasons explained previously in this document, NMFS has determined that no take by serious injury or death is authorized or anticipated by SOI's 2008/2009 seismic survey activities, and the potential for temporary or permanent hearing impairment is low and will be avoided through the incorporation of the mitigation measures mentioned in this document. The best scientific information indicates that an auditory injury is unlikely to occur as apparently sounds need to be significantly greater than 180 dB for injury to occur.

As described earlier, NMFS has also determined that only small numbers of marine mammals, relative to their population or stock size, will be harassed by SOI's 2008 seismic and shallow hazard programs.

Therefore, NMFS has determined that the short-term impact of conducting seismic surveys in the U.S. Chukchi and Beaufort seas may result, at worst, in a temporary modification in behavior by certain species of marine mammals. While behavioral and avoidance reactions may be made by these species in response to the resultant noise, this behavioral change is expected to have a negligible impact on the animals. While the number of potential incidental harassment takes will depend on the distribution and abundance of marine mammals (which vary annually due to variable ice conditions and other factors) in the area of seismic operations, the number of potential harassment takings is estimated to be small (see Estimated Takes for NMFS' analysis). In addition, for reasons described previously, injury (temporary or permanent hearing impairment) and/or mortality is unlikely and will be avoided through the incorporation of the mitigation measures mentioned in this document and required by the authorization. No rookeries, mating grounds, areas of concentrated feeding, or other areas of special significance for marine mammals occur within or near the planned area of operations during the season of operations.

Finally, NMFS has determined that the seismic activity by SOI in the northern Chukchi Sea and central and eastern Beaufort Sea in 2008/2009 will not have an unmitigable adverse impact on the subsistence uses of bowhead whales and other marine mammals. This determination is supported by the information in this **Federal Register** Notice, including: (1) Seismic activities in the Chukchi Sea would not begin until after July 20 by which time the spring bowhead hunt is expected to have ended; (2) that the fall bowhead whale hunt in the Beaufort Sea is governed by a CAA between SOI and the AEWC and village whaling captains and by mitigation measures to protect subsistence hunting of marine mammals contained in the IHA; (3) the CAA and IHA conditions will significantly reduce impacts on subsistence hunters to ensure that there will not be an unmitigable adverse impact on subsistence uses of marine mammals; (4) while it is possible that accessibility to belugas during the spring subsistence beluga hunt could be impaired by the survey, it is unlikely because very little of the survey is within 25 km (15.5 mi) of the Chukchi Sea coast, meaning the vessel will usually be well offshore and away from areas where seismic surveys would influence beluga hunting by communities; and (5) because seals (ringed, spotted, bearded) are hunted in nearshore waters and the seismic survey will remain offshore of the coastal and nearshore areas of these seals where natives would harvest these seals, it should not conflict with harvest activities.

Authorization

As a result of these determinations, NMFS has issued an IHA to SOI to take small numbers of marine mammals, by harassment, incidental to conducting a seismic survey in the northern Chukchi Sea and central and eastern Beaufort Sea in 2008/2009, provided the mitigation, monitoring, and reporting requirements described in this document are undertaken.

Dated: October 28, 2008.

James H. Lecky,

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

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AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

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Viral Hemorrhagic Septicemia; Interstate Movement and Import Restrictions on Certain Live Fish; comments due by 11-10-08; published 9-9-08 [FR E8-20852]

AGRICULTURE DEPARTMENT

Cooperative State Research, Education, and Extension Service

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COMMERCE DEPARTMENT

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Direct Investment Surveys:

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BE-15, Annual Survey of Foreign Direct Investment in the United States; comments due by 11-10-08; published 9-11-08 [FR E8-21070]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fisheries of the Exclusive Economic Zone Off Alaska; Allocating Bering Sea and Aleutian Islands King and Tanner Crab Fishery Resources; comments due by 11-10-08; published 9-11-08 [FR E8-21146]

Taking and Importing Marine Mammals:

U.S. Navy's Atlantic Fleet Active Sonar Training; comments due by 11-13-08; published 10-14-08 [FR E8-23617]

U.S. Navy Training in the Southern California Range Complex; comments due by 11-13-08; published 10-14-08 [FR E8-23618]

DEFENSE DEPARTMENT

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Louisiana; Approval of Section 110(a)(1) Maintenance Plans for the 1997 8-Hour Ozone Standard; comments due by 11-10-08; published 10-9-08 [FR E8-23867]

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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)

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