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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS–2008–0004]

Mediterranean Fruit Fly; Add Portion of Los Angeles County, CA, to the List of Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Mediterranean fruit fly regulations by adding a portion of Los Angeles County, CA, to the list of quarantined areas and by restricting the interstate movement of regulated articles from that area. This action is necessary to prevent the artificial spread of Mediterranean fruit fly.

DATES: This interim rule is effective on February 20, 2008. We will consider all comments that we receive on or before April 21, 2008.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2008-0004* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send two copies of your comment to Docket No. APHIS–2008–0004, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2008–0004.

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

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

FOR FURTHER INFORMATION CONTACT: Mr. Wayne D. Burnett, Domestic Coordinator, Fruit Fly Exclusion and Detection Programs, PPQ, APHIS, 4700 River Road Unit 137, Riverdale, MD 20737–1234; (301) 734–4387.

SUPPLEMENTARY INFORMATION:

Background

The Mediterranean fruit fly (Medfly, *Ceratitis capitata* [Wiedemann]) is one of the world's most destructive pests of numerous fruits and vegetables. The short life cycle of the Medfly allows rapid development of serious outbreaks, which can cause severe economic losses. Heavy infestations can cause complete loss of crops.

The Mediterranean fruit fly regulations, contained in 7 CFR 301.78 through 301.78–10 (referred to below as the regulations), were established to prevent the spread of Medfly into noninfested areas of the United States. In § 301.78–3, paragraph (a) provides that the Administrator will list as a quarantined area each State, or each portion of a State, in which Medfly has been found by an inspector, in which the Administrator has reason to believe that Medfly is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities in which Medfly has been found. The regulations impose restrictions on the interstate movement of regulated articles from the quarantined areas. Quarantined areas are listed in § 301.78–3(c).

Less than an entire State will be designated as a quarantined area only if the Administrator determines that: (1) The State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles that are equivalent to those imposed on the interstate movement of regulated articles and (2) the designation of less than the entire State as a quarantined area will prevent the interstate spread of Medfly.

Recent trapping surveys by inspectors of California State and county agencies have revealed that a portion of Los Angeles County, CA, is infested with Medfly.

State agencies in California have begun an intensive Medfly eradication program in the quarantined area in Los Angeles County. Also, California has taken action to restrict the intrastate movement of regulated articles from the quarantined area.

Accordingly, in order to prevent the spread of Medfly into noninfested areas of the United States, we are amending the regulations in § 301.78–3(c) by designating a portion of Los Angeles County, CA, as a quarantined area. The quarantined area is described in the regulatory text at the end of this document.

Emergency Action

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

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

Executive Order 12866 and Regulatory Flexibility Act

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

This rule amends the Medfly regulations by adding a portion of Los Angeles County, CA, to the list of quarantined areas. The regulations restrict the interstate movement of regulated articles from the quarantined area. Within the quarantined area there

are approximately 426 small entities that may be affected by this rule. These include 2 food distributors, 129 farmers' markets (including both fruit and plant sellers), 141 fruit sellers, 4 growers, 47 nurseries, 2 recyclers/land fillers, 14 swap meets (including both fruit sellers and plant sellers), 39 loaders (including fruit packers, trucking companies, and shipping services), and 48 yard maintenance firms. These 426 small entities comprise less than 1 percent of the total number of similar entities operating in the State of California. Additionally, few of these small entities move regulated articles interstate during the normal course of their business, nor do consumers of products purchased from those entities generally move those products interstate. The effect on those few entities that do move regulated articles interstate will be minimized by the availability of various treatments that, in most cases, will allow these small entities to move regulated articles interstate with very little additional cost.

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

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

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

List of Subjects in 7 CFR Part 301

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

■ Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

■ 1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 issued under Sec. 204, Title II, Public Law 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 issued under Sec. 203, Title II, Public Law 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

■ 2. In § 301.78–3, paragraph (c) is amended by adding, in alphabetical order under the heading ''California,'' an entry for Los Angeles County to read as follows:

§ 301.78–3 Quarantined areas.

* * * * *

(c) * * *

CALIFORNIA

Los Angeles County. That portion of Los Angeles County in the Palos Verdes Peninsula area bounded by a line as follows: Beginning at the intersection of State Highway 1 and Torrance Boulevard; then east, southeast, northeast, southeast, east, southeast, and east on Torrance Boulevard to Cabrillo Avenue; then southeast and south on Cabrillo Avenue to West Carson Street; then east on West Carson Street to South Vermont Avenue; then south on South Vermont Avenue to West 223rd Street; then east on West 223rd Street to Main Street; then south on Main Street to East Sepulveda Boulevard; then east on East Sepulveda Boulevard to Avalon Boulevard; then south on Avalon Boulevard to West Harry Bridges Boulevard; then southwest on West Harry Bridges Boulevard to John S. Gibson Boulevard; then southwest and south on John S. Gibson Boulevard to North Pacific Avenue; then south and southeast on North Pacific Avenue to North Front Street; then northeast and southeast on North Front Street to North Harbor Boulevard; then southeast on North Harbor Boulevard to South Harbor Boulevard; then south on South Harbor Boulevard to Miner Street; then southeast on Miner Street to East 22nd Street; then southwest on East 22nd Street to West 22nd Street; then southwest and west on West 22nd Street to South Pacific Avenue; then south on South Pacific Avenue to its intersection with the northern boundary of Point Fermin Park; then northeast and southeast along the boundary line of Point Fermin Park to its intersection with the California coastline; then southwest, north, northwest, west, southwest, northwest, southwest, northwest, southwest, northwest, west, northwest, southwest, northwest, southwest, south, west, north, northwest, southwest, northwest, northeast, north, northwest, southwest, northwest, southwest, north, northwest, southwest, northeast, northwest, north, northwest, northeast, northwest, north, northwest, northeast, northwest, west, northwest, northeast, northwest, west, northwest, northeast, northwest, southwest, northwest, northeast, north, northeast, north, northwest, north, northwest, southwest, north, northeast, and north along the California coastline to its intersection with the southern boundary line of Redondo Beach State Park; then northeast, north, west, north, northwest, and north along the boundary line of Redondo Beach State Park to its intersection with the boundary line of Veterans Park; then east, northeast, and north along the boundary line of Veterans Park to its intersection with Torrance Boulevard; then east on Torrance Boulevard to the point of beginning.

* * * * *

Done in Washington, DC, this 13th day of February 2008.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E8–3106 Filed 2–19–08; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS–2008–0005]

Mexican Fruit Fly; Designation of Portion of San Diego County, CA, as a Quarantined Area

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Mexican fruit fly regulations by designating a portion of San Diego County, CA, as a quarantined area and restricting the interstate movement of regulated articles from that area. This action is necessary to prevent the spread of the Mexican fruit fly into noninfested areas of the United States.

DATES: This interim rule is effective February 20, 2008. We will consider all comments that we receive on or before April 21, 2008.

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

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2008-0005* to submit or view comments and to view supporting and related materials available electronically.

• *Postal Mail/Commercial Delivery:* Please send two copies of your comment to Docket No. APHIS–2008–0005, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2008–0005.

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

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

FOR FURTHER INFORMATION CONTACT: Mr. Wayne D. Burnett, Domestic Coordinator, Fruit Fly Exclusion and Detection Programs, PPQ, APHIS, 4700 River Road Unit 137, Riverdale, MD 20737–1234; (301) 734–4387.

SUPPLEMENTARY INFORMATION:

Background

The Mexican fruit fly (*Anastrepha ludens*) is a destructive pest of citrus and many other types of fruit. The short life cycle of the Mexican fruit fly allows rapid development of serious outbreaks that can cause severe economic losses in commercial citrus-producing areas.

The Mexican fruit fly regulations, contained in 7 CFR 301.64 through 301.64–10 (referred to below as the regulations), were established to prevent the spread of the Mexican fruit fly to noninfested areas of the United States. The regulations impose restrictions on the interstate movement of regulated articles from quarantined areas.

Section 301.64–3 provides that the Deputy Administrator for Plant Protection and Quarantine, Animal and Plant Health Inspection Service (APHIS), shall list as a quarantined area each State, or each portion of a State, in which the Mexican fruit fly has been found by an inspector, in which the Deputy Administrator has reason to believe the Mexican fruit fly is present, or that the Deputy Administrator considers necessary to regulate because of its proximity to the Mexican fruit fly or its inseparability for quarantine enforcement purposes from localities in which the Mexican fruit fly occurs.

Less than an entire State is designated as a quarantined area only if the Deputy Administrator determines that the State has adopted and is enforcing a quarantine or regulation that imposes restrictions on the intrastate movement of the regulated articles that are substantially the same as those that are imposed with respect to the interstate movement of the articles by the APHIS regulations and the designation of less than the entire State as a quarantined area will otherwise be adequate to prevent the artificial interstate spread of the Mexican fruit fly.

Recent trapping surveys by county agencies reveal that a portion of San Diego County, CA, is infested with the Mexican fruit fly.

Accordingly, to prevent the spread of the Mexican fruit fly to noninfested areas of the United States, we are amending the regulations in § 301.64–3 by designating that portion of San Diego County, CA, as a quarantined area for the Mexican fruit fly. The quarantined area is described in detail in the regulatory text at the end of this document. The Deputy Administrator has determined that it is not necessary to designate the entire State of California as a quarantined area.

Emergency Action

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

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

Executive Order 12866 and Regulatory Flexibility Act

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

This rule amends the Mexican fruit fly regulations by designating a portion of San Diego County, CA, as a quarantined area and restricting the interstate movement of regulated articles from that area. This action is necessary to prevent the spread of the Mexican fruit fly into noninfested areas of the United States.

Within the quarantined area there are approximately 284 small entities that may be affected by this rule. These include 91 yard maintenance companies, 49 fruit sellers, 45 growers, 34 nurseries, 29 markets (including swap meets and farmers' markets), 12 haulers, 11 harvesters, 7 packers, 2 grove management businesses, 2 transient load businesses, and 2 distributors. These 284 entities comprise less than 1 percent of the total number of similar entities operating in the State of California. Additionally, these small entities sell regulated articles primarily for local intrastate, not interstate movement, so the effect, if any, of this regulation on these entities appears to be minimal.

The effect on those few entities that do move regulated articles interstate will be minimized by the availability of various treatments that, in most cases, will allow these small entities to move regulated articles interstate with very little additional cost.

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

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

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

List of Subjects in 7 CFR Part 301

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

■ Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

■ 1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 issued under Sec. 204, Title II, Public Law 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 issued under Sec. 203, Title II, Public Law 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

■ 2. In § 301.64–3, paragraph (c) is amended by adding, in alphabetical order, an entry for California to read as follows:

§ 301.64–3 Quarantined areas.

* * * * *

(c) * * *

CALIFORNIA

San Diego County. That portion of the county in the Escondido area bounded by a line as follows: Beginning at the intersection of North Broadway and Cougar Pass Road; then east, northeast, southeast, northeast, northwest, northeast, east, north, northwest, northeast, northwest, northeast, northwest, northeast, north, and northeast on Cougar Pass Road to the western boundary line of Daley Ranch; then northwest, north, northeast, southeast, south, east, southeast, east, north, and southeast along the boundary line of Daley Ranch to Frace Lane; then northeast along an imaginary line to the intersection of Tumbleweed Trail and Wildflower Way; then northeast on Wildflower Way to Red Ironbark Drive; then southeast on Red Ironbark Drive to Bridlewood Lane; then northeast on Bridlewood Lane to Santolina Street; then north and northeast on Santolina Street to Tee Lee Lane; then east and northeast on Tee Lee Lane to Banbury Drive; then northwest, north, northeast, and southeast on Banbury Drive to Valley Center Road; then northwest on Valley Center Road to Woods Valley Road; then northeast, southeast, northeast, southeast, northeast, southeast, northeast, southeast, south, and southeast on Woods Valley Road to Lake Wohlford Road; then southwest, southeast, southwest, south, southeast, and southwest on Lake Wohlford Road to Guejito Road; then southeast, south, southeast, and south on Guejito Road to Crown Hill Lane; then south, southwest, southeast, northeast, southeast, north, east, northeast, southeast, south, southeast, and south on Crown Hill Lane to its southwesternmost point; then northwest along an imaginary line to the northeasternmost point of Rockwood Canyon Creek; then southwest, south, southeast, south, southeast, south, southwest, southeast, southwest, south, and southwest along Rockwood Canyon Creek to State Highway 78; then southwest and west on State Highway 78 to Ysabel Creek Road; then south and southeast on Ysabel Creek Road to its intersection with Bandy Canyon Road; then southwest, south, west, and south on Bandy Canyon Road to Highland Valley Road; then west, southwest, northwest, southwest, northwest, southwest, northwest, and southwest on Highland Valley Road to Sardi Creek; then northwest along an imaginary line to the easternmost point of Valle Grande; then west on Valle Grande to Sierra Linda Drive; then northwest, southwest, northwest, southwest, and northwest on Sierra Linda Drive to the boundary line of The Vineyard at Escondido Golf Course; then northwest, northeast, west, northwest, southwest, northwest, southwest, southeast, southwest, and northwest along the boundary line of The Vineyard at Escondido Golf Course to Bear Valley Parkway South; then southwest on Bear Valley Parkway South to East Via Rancho Parkway; then northwest on East Via Rancho Parkway to West Via Rancho Parkway; then northwest, west, southwest, northwest, and west on West Via Rancho Parkway to Del Dios Highway; then north and northeast on Del Dios Highway to West Citracado Parkway; then northwest on West Citracado Parkway to Avenida Del Diablo; then west, northwest, north, west, and northwest on Avenida Del Diablo to its northwesternmost point; then northwest along an imaginary line to the intersection of Harmony Grove Road and Kauana Loa Drive; then west, north, northwest, and west on Kauana Loa Drive to Country Club Drive; then north, northeast, and east on Country Club Drive to North Citricado Parkway; then north and northeast on North Citricado Parkway to Nordahl Road; then northeast on Nordahl Road to State Highway 78; then northwest on State Highway 78 to East Mission Road; then northwest on East Mission Road to Bennett Avenue; then northeast, north, and northeast on Bennett Avenue to West El Norte Parkway; then northwest on West El Norte Parkway to West Country Club Lane; then northeast, southeast, northeast, and southeast on West Country Club Lane to Gary Lane; then northeast and east on Gary Lane to Avenida De Aquacate; then north on Avenida De Aquacate to Vaquero Glen; then east on Vaquero Glen to its easternmost point; then northeast along an imaginary line to the southernmost point of Athens Place; then north on Athens Place to Gem Lane; then northeast on Gem Lane to Rockhoff Road; then northwest, north, southeast, south, and southwest on Rockhoff Road to its southeastern terminal point; then southeast along an imaginary line to the intersection of Rockhoff Road and North Nutmeg Street; then northwest, northeast, and east on North Nutmeg Street to North Center City Parkway; then north and northwest on North Center City Parkway to Ivy Dell Lane; then northeast along an imaginary line to the intersection of Jesmond Dene Road and Rue Montreux; then northeast, northwest, north, east, and northeast on Rue Montreux to Rue De Lac; then southeast on Rue De Lac to Rue De Fleur; then north on Rue De Fleur to its northernmost point; then northeast along an imaginary line to the intersection of Los Arboles Ranch Road and Calle Ricardo; then northeast along an imaginary line to the intersection of Reidy Canyon Trail and North Broadway; then northeast, east, and north on North Broadway to the point of beginning.

* * * * *

Done in Washington, DC, this 13th day of February 2008.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E8–3105 Filed 2–19–08; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. APHIS–2007–0151]

Add Mauritius to the List of Regions Where African Swine Fever Exists

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the regulations concerning the importation of animals and animal products by adding Mauritius to the list of regions where African swine fever exists. We are taking this action because outbreaks of African swine fever have been

confirmed in various locations throughout Mauritius. This action will restrict the importation of pork and pork products into the United States from Mauritius and is necessary to prevent the introduction of African swine fever into the United States.

DATES: This interim rule is effective February 20, 2008. However, we are imposing its restrictions retroactively to October 17, 2007. We will consider all comments that we receive on or before April 21, 2008.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2007-0151* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send two copies of your comment to Docket No. APHIS–2007–0151, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2007–0151.

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

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

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

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation of specified animals and animal products to prevent the introduction into the United States of various animal diseases, including rinderpest, foot-and-mouth disease, bovine spongiform encephalopathy, swine vesicular disease, classical swine fever, and African swine fever (ASF). These are dangerous and destructive diseases of ruminants and swine.

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

On October 19, 2007, the Republic of Mauritius reported to the World Organization for Animal Health three outbreaks of ASF in various areas throughout the country. The source of the outbreak is unknown. Therefore, in order to prevent the introduction of ASF into the United States, we are amending the regulations by adding Mauritius to the list in § 94.8 of regions where ASF exists or is reasonably believed to exist. As a result of this action, the importation into the United States of pork and pork products from Mauritius will be restricted. We are imposing this restriction retroactively to October 17, 2007, which is the date that the presence of ASF in Mauritius was confirmed.

Emergency Action

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

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

Executive Order 12866 and Regulatory Flexibility Act

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

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

The rule will restrict the importation of pork and pork products from Mauritius. Mauritius has had no swine or swine products exports to the United States in the past several years. Since the United States does not currently import any pork or pork products from Mauritius, it is unlikely that this interim rule will have any substantial effects on trade, or on large or small businesses.

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

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has retroactive effect to October 17, 2007; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

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

List of Subjects in 9 CFR Part 94

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

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

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

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

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

§ 94.8 [Amended]

■ 2. In § 94.8, the introductory text is amended by adding the word ''Mauritius,'' after the word ''Malta,''.

Done in Washington, DC, this 13th day of February 2008.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E8–3107 Filed 2–19–08; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM383; Notice No. 25–367–SC]

Special Conditions: Boeing Model 777 Series Airplanes; Seats With Non-Traditional, Large, Non-Metallic Panels

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are for Boeing Model 777 series airplanes. These airplanes will have a novel or unusual design feature(s) associated with seats that include non-traditional, large, non-metallic panels that would affect survivability during a post-crash fire event. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is February 7, 2008.

FOR FURTHER INFORMATION CONTACT: Alan Sinclair, FAA, Airframe/Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2195; facsimile (425) 227–1232; electronic mail *alan.sinclair@faa.gov.*

SUPPLEMENTARY INFORMATION:

Change to Special Condition Number 4

The FAA previously notified the public of our intent to issue special conditions for seats with non-traditional, large, non-metallic panels on various airplane makes and models. Notice of Proposed Special Conditions No. 25–06–13–SC, applicable to Boeing Model 737 series airplanes, was published in the **Federal Register** on November 9, 2006 (71 FR 65761). The special conditions were issued on June 29, 2007 (Docket No. NM 359, Special Conditions No. 25–358–SC), published in the **Federal Register** on July 10, 2007 (72 FR 37425), and became effective on August 9, 2007. Both the Notice and the Final Special Conditions contained these words:

> We anticipate that seats with non-traditional, large, non-metallic panels will be installed in other makes and models of airplanes. We have made the determination to require special conditions for all applications requesting the installation of seats with non-traditional, large, non-metallic panels until the airworthiness requirements can be revised to address this issue. Having the same standards across the range of airplane makes and models will ensure a level playing field for the aviation industry.

Special condition number 4 in the 737 special conditions limits the applicability of the special conditions to new seat certification programs applied for after the effective date of the special conditions. In these special conditions the FAA changed the applicability to make the special conditions applicable to new seat certification programs that are approved after the effective date of the special conditions. This change could affect pending as well as future project applications. The rationale behind this change is that these seat installations affect survivability during a post-crash fire event and should be implemented as soon as possible. Additionally, the public has been previously notified of the FAA's intent to issue similar special conditions on other airplane makes and models. Because of an imminent certification program, these special conditions are effective immediately. However, in view of the standard practice to make special conditions effective 30 days after issuance, these special conditions permit 30 days before compliance is required.

Background

On August 8, 2005, Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124, applied for a design change to Type Certificate No. T00001SE for installation of seats that include non-traditional, large, non-metallic panels in Boeing Model 777 series airplanes. The Boeing Model 777 series airplanes, currently approved under Type Certificate No. T00001SE, are swept-wing, conventional tail, twin-engine, turbofan-powered, dual aisle, large-sized transport category airplanes.

The applicable regulations to airplanes currently approved under Type Certificate No. T00001SE do not require seats to meet the more stringent flammability standards required of large, non-metallic panels in the cabin interior. At the time the applicable rules were written, seats were designed with a metal frame covered by fabric, not with large, non-metallic panels. Seats also met the then recently adopted standards for flammability of seat cushions. With the seat design being mostly fabric and metal, the contribution to a fire in the cabin had been minimized and was not considered a threat. For these reasons, seats did not need to be tested to heat release and smoke emission requirements.

Seat designs have now evolved to occasionally include non-traditional, large, non-metallic panels. Taken in total, the surface area of these panels is on the same order as the sidewall and overhead stowage bin interior panels. To provide the level of passenger protection intended by the airworthiness standards, these non-traditional, large, non-metallic panels in the cabin must meet the standards of Title 14 Code of Federal Regulations (CFR), part 25, Appendix F, parts IV and V, heat release and smoke emission requirements.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Boeing must show that the Model 777 series airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. T00001SE, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in Type Certificate No. T00001SE are as follows:

- For Model 777–200 airplanes—Title 14 CFR part 25, as amended by Amendment 25–1 through Amendment 25–82.
- For Model 777–200LR airplanes—Title 14 CFR part 25, as amended by Amendment 25–1 through Amendment 25–100 with the exceptions listed: §§ 25.831(a) and 25.831(g) at Amendment 25–86; § 25.841(a) at Amendment 25–86; and § 25.853(d)(3) at Amendment 25–82.
- For Model 777–300 airplanes—Title 14 CFR part 25, as amended by Amendment 25–1 through Amendment 25–86 with the exception listed: § 25.853(d)(3), Compartment interiors, at Amendment 25–82.
- For Model 777–300ER airplanes—Title 14 CFR part 25, as amended by Amendment 25–1 through Amendment 25–98 with the exception listed: § 25.853(d)(3), Compartment interiors, at Amendment 25–82.

In addition, the certification basis includes certain special conditions, exemptions, or later amended sections of the applicable part that are not relevant to these special conditions.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25) do not contain adequate or appropriate safety standards for the Boeing Model 777 series airplanes because of a novel or unusual

design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Boeing Model 777 series airplanes 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.

Special conditions, as defined in § 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same or similar novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same or similar novel or unusual design feature, the special conditions would also apply to the other model under § 21.101.

Novel or Unusual Design Features

The Boeing Model 777 series airplanes will incorporate the following novel or unusual design features: These models offer interior arrangements that include passenger seats that incorporate non-traditional, large, non-metallic panels in lieu of the traditional metal frame covered by fabric. The flammability properties of these panels have been shown to significantly affect the survivability of the cabin in the case of fire. These seats are considered a novel design for transport category airplanes that include Amendment 25–61 and Amendment 25–66 in the certification basis, and were not considered when those airworthiness standards were established.

The existing regulations do not provide adequate or appropriate safety standards for seat designs that incorporate non-traditional, large, non-metallic panels in their designs. In order to provide a level of safety that is equivalent to that afforded to the balance of the cabin, additional airworthiness standards, in the form of special conditions, are necessary. These special conditions supplement § 25.853. The requirements contained in these special conditions consist of applying the identical test conditions required of all other large panels in the cabin, to seats with non-traditional, large, non-metallic panels.

Definition of ''Non-Traditional, Large, Non-Metallic Panel''

A non-traditional, large, non-metallic panel, in this case, is defined as a panel with exposed-surface areas greater than 1.5 square feet installed per seat place. The panel may consist of either a single component or multiple components in a concentrated area. Examples of parts of the seat where these non-traditional panels are installed include, but are not limited to: Seat backs, bottoms and leg/foot rests, kick panels, back shells, credenzas and associated furniture. Examples of traditional exempted parts of the seat include: Arm caps, armrest close-outs such as end bays and armrest-styled center consoles, food trays, video monitors, and shrouds.

Clarification of ''Exposed''

''Exposed'' is considered to include panels that are directly exposed to the passenger cabin in the traditional sense, and panels that are enveloped, such as by a dress cover. Traditional fabrics or leathers currently used on seats are excluded from these special conditions. These materials must still comply with § 25.853(a) and § 25.853(c) if used as a covering for a seat cushion, or § 25.853(a) if installed elsewhere on the seat. Non-traditional, large, non-metallic panels covered with traditional fabrics or leathers will be tested without their coverings or covering attachments.

Discussion

In the early 1980s the FAA conducted extensive research on the effects of post-crash flammability in the passenger cabin. As a result of this research and service experience, we adopted new standards for interior surfaces associated with large surface area parts. Specifically, the rules require measurement of heat release and smoke emission (part 25, Appendix F, parts IV and V) for the affected parts. Heat release has been shown to have a direct correlation with post-crash fire survival time. Materials that comply with the standards (i.e., § 25.853 entitled ''Compartment interiors'' as amended by Amendment 25–61 and Amendment 25–66) extend survival time by approximately 2 minutes over materials that do not comply.

At the time these standards were written the potential application of the requirements of heat release and smoke emission to seats was explored. The seat frame itself was not a concern because it was primarily made of aluminum and there were only small amounts of non-metallic materials. It was determined that the overall effect on survivability was negligible, whether or not the food trays met the heat release and smoke requirements. The requirements therefore did not address seats. The preambles to both the Notice of Proposed Rule Making (NPRM), Notice No. 85–10 (50 FR 15038, April 16, 1985) and the Final Rule at Amendment 25–61 (51 FR 26206, July 21, 1986), specifically note that seats were excluded ''because the recently-adopted standards for flammability of seat cushions will greatly inhibit involvement of the seats.''

Subsequently, the Final Rule at Amendment 25–83 (60 FR 6615, March 6, 1995) clarified the definition of minimum panel size: ''It is not possible to cite a specific size that will apply in all installations; however, as a general rule, components with exposed-surface areas of one square foot or less may be considered small enough that they do not have to meet the new standards. Components with exposed-surface areas greater than two square feet may be considered large enough that they do have to meet the new standards. Those with exposed-surface areas greater than one square foot, but less than two square feet, must be considered in conjunction with the areas of the cabin in which they are installed before a determination could be made.''

In the late 1990s, the FAA issued Policy Memorandum 97–112–39, *Guidance for Flammability Testing of Seat/Console Installations,* October 17, 1997 (*http://rgl.faa.gov*). That memo was issued when it became clear that seat designs were evolving to include large, non-metallic panels with surface areas that would impact survivability during a cabin fire event, comparable to partitions or galleys. The memo noted that large surface area panels must comply with heat release and smoke emission requirements, even if they were attached to a seat. If the FAA had not issued such policy, seat designs could have been viewed as a loophole to the airworthiness standards that would result in an unacceptable decrease in survivability during a cabin fire event.

In October of 2004, an issue was raised regarding the appropriate flammability standards for passenger seats that incorporated non-traditional, large, non-metallic panels in lieu of the traditional metal covered by fabric. The Seattle Aircraft Certification Office and Transport Standards Staff reviewed this design and determined that it represented the kind and quantity of material that should be required to pass the heat release and smoke emissions requirements. We have determined that special conditions would be promulgated to apply the standards

defined in 14 CFR 25.853(d) to seats with large, non-metallic panels in their design.

Discussion of Comments

Notice of proposed special conditions No. 25–07–15–SC, pertaining to Boeing Model 777 series airplanes, was published in the **Federal Register** on October 29, 2007 (72 FR 61085). We only received comments from Boeing.

Change ''Approved'' to ''Applied for'' in Special Condition Number 4

Boeing requested that the word ''approved'' in the following sentence be changed to ''applied for.''

Only airplanes associated with new seat certification programs approved after the effective date of these special conditions will be affected by the requirements in these special conditions.

Boeing also requested clarification regarding what is meant by ''approved.''

FAA Response: Special condition number 4 was revised from what was issued for the final special conditions applicable to Model 737 airplanes. The Model 737 final special conditions contained the phrase ''applied for.'' That phrase was changed to ''approved'' in these final special conditions to ensure that these special conditions are applicable to as many Model 777 certification projects as possible. The 737 special conditions, in effect, notified Boeing that the flammability issue regarding seats with non-traditional, large, non-metallic panels must be addressed. The FAA discussed this issue with Boeing and stated that all subsequent special conditions related to this matter would be based on the project approval date.

To clarify what we mean by the approval date, the approval date is the date of approval of the affected amended type certificate or supplemental type certificate.

These Special Conditions Are Not Being Applied to Other Airplane Manufacturers

Boeing did not request a specific change in this comment, but did draw attention to the fact that the standards promulgated by these special conditions have not yet achieved a ''level playing field for the aviation industry.'' Boeing stated that it agreed with the FAA's goals to ensure that all parties in the industry are treated fairly, and the new standards are applied uniformly. However, Boeing noted that it is not apparent that those goals have yet been met.

FAA Response: As projects are identified that include seats with large, non-metallic panels, the FAA will issue special conditions for the affected airplane makes and models. We are currently working on several other special condition packages for airplanes produced by other manufacturers. In addition, we are considering rulemaking to revise § 25.853 to address this issue.

These special conditions are adopted as proposed.

Applicability

As discussed above, these special conditions are applicable to Boeing Model 777 series airplanes. Because the heat release and smoke testing requirements of § 25.853 are part of the type certification basis for the Model 777, these special conditions are applicable to all new seat certification programs for Model 777 series airplanes. The existing (i.e. with unchanged interiors) Model 777 fleet and follow-on deliveries of Model 777 series airplanes with previously certificated interiors are not affected. Should Boeing apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Effective Upon Issuance

Under standard practice, the effective date of final special conditions would be 30 days after the date of publication in the **Federal Register**; however, as the delivery date for an affected Boeing Model 777 series airplane is imminent, the FAA finds that good cause exists to make these special conditions effective upon issuance.

Conclusion

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

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

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 Boeing Model 777 series airplanes. Compliance may be elected until March 8, 2008.

1. Except as provided in paragraph 3 of these special conditions, compliance with Title 14 CFR part 25, Appendix F, parts IV and V, heat release and smoke emission, is required for seats that incorporate non-traditional, large, non-metallic panels that may either be a single component or multiple components in a concentrated area in their design.

2. The applicant may designate up to and including 1.5 square feet of non-traditional, non-metallic panel material per seat place that does not have to comply with special condition Number 1, above. A triple seat assembly may have a total of 4.5 square feet excluded on any portion of the assembly (e.g., outboard seat place 1 square foot, middle 1 square foot, and inboard 2.5 square feet).

3. Seats do not have to meet the test requirements of Title 14 CFR part 25, Appendix F, parts IV and V, when installed in compartments that are not otherwise required to meet these requirements. Examples include:

a. Airplanes with passenger capacities of 19 or less, and

b. Airplanes exempted from § 25.853, Amendment 25–61 or later.

4. Only airplanes associated with new seat certification programs approved after the effective date of these special conditions will be affected by the requirements in these special conditions. Previously certificated interiors on the existing airplane fleet and follow-on deliveries of airplanes with previously certificated interiors are not affected.

Issued in Renton, Washington, on February 7, 2008.

Kevin Hull,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–3141 Filed 2–19–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0164; Directorate Identifier 2007–SW–43–AD; Amendment 39–15375; AD 2008–04–03]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS–365N2 and N3, SA–365C, C1 and C2, and SA–365N and N1 Helicopters

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

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for

Eurocopter Model AS–365N2 and N3, SA–365C, C1 and C2, and SA–365N and N1 helicopters. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority to identify and correct an unsafe condition on an aviation product. The European Aviation Safety Agency (EASA), the Technical Agent for France, with which we have a bilateral agreement, states in the MCAI:

> This Emergency Airworthiness Directive is issued following several reports of tightening torque loss detected on the main rotor hub (MRH)-to-main rotor mast bolted attachment. These findings were made on EUROCOPTER-assembled attachments with less than 300 operating hours.

A loss of tightening torque on the MRH-to-main rotor mast attachment bolt could lead to loss of the main rotor head.

This AD requires actions that are intended to address the unsafe condition caused by a loss of tightening torque on the MRH attachment bolts.

DATES: This AD becomes effective March 6, 2008.

The Director of the Federal Register approved the incorporation by reference of Eurocopter Emergency Alert Service Bulletin No. 62.00.22 and No. 65.44, both dated April 10, 2006, as of March 6, 2008.

We must receive comments on this AD by April 21, 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 Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the economic 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.

FOR FURTHER INFORMATION CONTACT: Jim Grigg, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Safety Management Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5126, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Streamlined Issuance of AD

The FAA is implementing a new process for streamlining the issuance of ADs related to MCAI. This streamlined process will allow us to adopt MCAI safety requirements in a more efficient manner and will reduce safety risks to the public. This process continues to follow all FAA AD issuance processes to meet legal, economic, Administrative Procedure Act, and **Federal Register** requirements. We also continue to meet our technical decision-making responsibilities to identify and correct unsafe conditions on U.S.-certificated products.

This AD references the MCAI and related service information that we considered in forming the engineering basis to correct the unsafe condition. The AD contains text copied from the MCAI and for this reason might not follow our plain language principles.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued an MCAI in the form of EASA EAD No. 2006–0084–E, dated April 11, 2006 (referred to after this as ''the MCAI''), to correct an unsafe condition for these French-certificated products. The MCAI states:

> This Emergency Airworthiness Directive is issued following several reports of tightening torque loss detected on the main rotor hub (MRH)-to-main rotor mast bolted attachment. These findings were made on EUROCOPTER-assembled attachments with less than 300 operating hours.
>
> Misinterpretation of the assembly documentation used by EUROCOPTER Marignane may have led to the assembly of these attachments with no grease applied to the nut threads, which leads to a reduction in the tightening loads.

A loss of tightening torque on the MRH-to-main rotor mast attachment bolt could lead to loss of the main rotor head. You may obtain further information by examining the MCAI and service information in the AD docket.

Relevant Service Information

Eurocopter has issued Alert Service Bulletin (ASB) No. 62.00.22, applicable to Model AS–365N2 and N3, and SA–365N and N1 helicopters, and ASB 65.44, applicable to Model SA–365C, C1, and C2 helicopters, both dated April 10, 2006. The actions described in the MCAI are intended to correct the same unsafe condition as that identified in this service information.

FAA's Determination and Requirements of This AD

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

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. The AD requires ''inspections'' rather than ''checks'' of the tightening torque. It also uses the term ''time-in-service'' rather than ''flying hours''. In making these changes, we do not intend to differ substantively from the information provided in the MCAI.

These differences are highlighted in the ''Differences Between the FAA AD and the MCAI'' section in the AD.

Costs of Compliance

We estimate that this AD will affect 36 helicopters of U.S. registry and that it will take about 4 work hours per helicopter to perform the tightening torque inspections. The average labor rate is $80 per work-hour. Based on these figures, we estimate the total cost for this fleet of helicopters to be $11,520, or $320 per helicopter, assuming there will not be 4 or more adjacent bolts with torque less than 3.2 MdaN.

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 of a discovery of certain MRH attachment bolts with too little tightening torque, which could result in loss of the main rotor head, and subsequent loss of control of the helicopter. 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–2008–0164; Directorate Identifier 2007–SW–43–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 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 an economic 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:

2008–04–03 Eurocopter: Amendment 39–15375. Docket No. FAA–2008–0164; Directorate Identifier 2007–SW–43–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective on March 6, 2008.

Other Affected ADs

(b) None.

Applicability

(c) This AD applies to Model AS–365N2 and N3, SA–365C, C1 and C2, SA–365N and N1 helicopters, certificated in any category.

Reason

(d) The mandatory continued airworthiness information (MCAI) states:

This Emergency Airworthiness Directive is issued following several reports of tightening torque loss detected on the main rotor hub (MRH)-to-main rotor mast bolted attachment. These findings were made on EUROCOPTER-assembled attachments with less than 300 operating hours.

Misinterpretation of the assembly documentation used by EUROCOPTER Marignane may have led to the assembly of these attachments with no grease applied to the nut threads, which leads to a reduction in the tightening loads.

A loss of tightening torque on the MRH-to-main rotor mast attachment bolt could lead to loss of the main rotor head.

Actions and Compliance

(e) Inspect the tightening torque of the MRH to main rotor mast assembly attachment bolts in accordance with paragraph 2.B. of Eurocopter Alert Service Bulletin (ASB) No. 62.00.22, applicable to Model AS–365N2 and N3, and SA365N and N1 helicopters, or ASB No. 65.44, applicable to Model SA–365C, C1, and C2 helicopters, both dated April 10, 2006, unless already done:

(1) On or before reaching 300 hours TIS, for helicopters with less than 280 hours time-in-service (TIS); or

(2) Within 20 hours TIS, for helicopters with 280 or more hours TIS.

Differences Between the FAA AD and the MCAI

(f) This AD requires ''inspections'' rather than ''checks'' of the tightening torque. It also uses the term ''time-in-service'' rather than ''flying hours''.

Subject

(g) Air Transport Association of America (ATA) Code 5220, Main Rotor Head.

Other Information

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

(1) Alternative Methods of Compliance (AMOCs): The Manager, Safety Management Group, 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: Jim Grigg, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Safety Management Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5126, fax (817) 222–5961.

(2) Airworthy Product: Use only FAA-approved corrective actions. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent) if the State of Design has an appropriate bilateral agreement with the United States. 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) MCAI European Aviation Safety Agency (EASA) AD No. 2006–0084–E, dated April 11, 2006, contains related information.

Material Incorporated by Reference

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

(k) For service information identified in this AD, contact American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527.

(l) You may review copies of the service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 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

ASB	Pages	Revision	Date
Eurocopter ASB No. 62.00.22	6 through 8	Revision 0	April 10, 2006.
Eurocopter ASB No. 65.44	6 through 8	Revision 0	April 10, 2006.

Issued in Fort Worth, Texas on February 6, 2008.

Scott A. Horn,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. E8–2849 Filed 2–19–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0165; Directorate Identifier 2007–SW–58–AD; Amendment 39–15377; AD 2008–04–05]

RIN 2120–AA64

Airworthiness Directives; Eurocopter Deutschland Model EC135 Helicopters

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

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for Eurocopter Deutschland (Eurocopter) Model EC135 helicopters. 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 European Aviation Safety Agency (EASA), the Technical Agent for the Federal Republic of Germany, with which we have a bilateral agreement, states in the MCAI:

During a flight a burning odour [sic] could be smelled in the cabin. Its reason was a short circuit in the LH cable channel, which was caused by a damaged wire harness. The wire harness was damaged by the side channel cover's attachment hardware.

The rubbing and chafing of the wiring harnesses in the tunnels underneath the channel cover, against the screws and rivets attaching the channel covers, could lead to a short circuit of the wiring harness.

This AD requires actions that are intended to address this unsafe condition by preventing a short circuit resulting from a damaged wiring harness, which could subsequently lead to a fire in the helicopter.

DATES: This AD becomes effective on March 6, 2008.

The Director of the Federal Register approved the incorporation by reference of Eurocopter Alert Service Bulletin EC135–53A–1017, Revision 1, dated June 22, 2007, as of March 6, 2008.

We must receive comments on this AD by April 21, 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.

You may get the service information identified in this AD from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the economic 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.

FOR FURTHER INFORMATION CONTACT: Carroll Wright, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Policy Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5120, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Streamlined Issuance of AD

The FAA is implementing a new process for streamlining the issuance of ADs related to MCAI. This streamlined process will allow us to adopt MCAI safety requirements in a more efficient manner and will reduce safety risks to the public. This process continues to follow all FAA AD issuance processes to meet legal, economic, Administrative Procedure Act, and **Federal Register** requirements. We also continue to meet our technical decision-making responsibilities to identify and correct unsafe conditions on U.S.-certificated products.

This AD references the MCAI and related service information that we considered in forming the engineering basis to correct the unsafe condition. The AD contains text copied from the MCAI and for this reason might not follow our plain language principles.

Discussion

The European Aviation Safety Agency (EASA), which is the technical agent for Member States of the European Community, has issued an MCAI in the form of EASA Emergency AD No. 2007–0021–E, dated January 19, 2007, (referred to after this as ''the MCAI''), to correct an unsafe condition for this German-certificated helicopter. The MCAI states:

During a flight a burning odour [sic] could be smelled in the cabin. Its reason was a short circuit in the LH cable channel, which was caused by a damaged wire harness. The wire harness was damaged by the side channel cover's attachment hardware.

The rubbing and chafing of the wiring harnesses in the tunnels underneath the channel cover, against the screws and rivets attaching the channel covers, could lead to a short circuit of the wiring harness and a subsequent fire in the helicopter.

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

Relevant Service Information

Eurocopter has issued Alert Service Bulletin No. EC135–53A–017, Revision 1, dated June 22, 2007. The actions described in the MCAI are intended to correct the same unsafe condition as

that identified in the service information.

FAA's Determination and Requirements of This AD

This product has been approved by the aviation authority of the Federal Republic of Germany and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design, we have been notified of the unsafe condition described in the MCAI and service information. We are issuing this AD because we evaluated all pertinent information 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. This AD differs from the MCAI as follows:

- We do not require contacting the manufacturer for further instructions if a wiring harness is damaged but require that you replace a damaged wiring harness with an airworthy wiring harness.
- We do not require a February 28, 2007, compliance time because that date has passed.
- We include in the applicability the helicopter serial number (S/N) 0005 up to and including S/N 0576 as stated in the service information rather than the helicopter S/N 0005 up to and including 0654 as stated in the MCAI.
- We refer to the compliance time as ''hours time-in-service'' rather than ''flight hours.''

These differences are highlighted in the ''Differences Between the FAA AD and the MCAI'' section in the AD.

Costs of Compliance

We estimate that this AD will affect 156 helicopters of U.S. registry. We also estimate that it will take 5 hours to inspect a helicopter with a copilot collective lever cover and 4 hours to inspect a helicopter without a copilot collective lever cover. The average labor rate is $80 per work-hour. Required parts will cost about $400 for a helicopter with a copilot collective lever cover and $320 for a helicopter without a copilot collective lever cover. Based on these figures, we estimate the total cost to be $124,800, assuming all the helicopters have a copilot collective lever cover.

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 a short circuit and fire could occur from a damaged wiring harness. Each wiring harness must be inspected within a short period of time, 25 hours time-in-service, for chafing and wear and modified as necessary to prevent a fire from occurring in the helicopter. 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–2008–0165; Directorate Identifier 2007–SW–58–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 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 an economic 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:

2008–04–05 Eurocopter Deutschland: Amendment 39–15377. Docket No. FAA–2008–0165; Directorate Identifier 2007–SW–58–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective on March 6, 2008.

Other Affected ADs

(b) None.

Applicability

(c) This AD applies to Model EC135 helicopters, serial number 0005 up to and including 0576, certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code: 5321, Frame; and 1497, Miscellaneous wiring.

Reason

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

During a flight a burning odour [sic] could be smelled in the cabin. Its reason was a short circuit in the LH cable channel, which was caused by a damaged wire harness. The wire harness was damaged by the side channel cover's attachment hardware.

The rubbing and chafing of the wiring harnesses in the tunnels underneath the channel cover, against the screws and rivets attaching the channel covers, could lead to a short circuit of the wiring harness and a subsequent fire in the helicopter.

Actions and Compliance

(f) Within 25 hours time-in-service (TIS), unless already done, do the following:

(1) Inspect the wiring harnesses for chafing and wear in the areas shown in Figure 1 of Eurocopter Alert Service Bulletin EC135–53A–017, Revision 1, dated June 22, 2007 (ASB).

(i) If chafing or wear is found on the wiring harness, before further flight, replace the wiring harness with an airworthy wiring harness.

(ii) If no chafing or wear is found, modify the side channel covers by affixing double-sided adhesive tape in the area depicted in Figure 2 of the ASB by following the Accomplishment Instructions, paragraph C, of the ASB.

(2) Modify the attachment of the copilot collective lever cover as depicted in Figure 3 of the ASB by following the Accomplishment Instructions, paragraph D, of the ASB.

(3) Attach chafing protection to the wiring harnesses and replace affected screws as depicted in and in accordance with Figure 4 of the ASB and by following the Accomplishment Instructions, paragraphs E and F, of the ASB. Paragraph F(2) of the ASB applies only to helicopters with a copilot collective lever cover.

Differences Between the FAA AD and the MCAI

(g) This AD differs from the MCAI as follows:

(1) We do not require contacting the manufacturer for further instructions if a wiring harness is damaged but require that you replace a damaged wiring harness with an airworthy wiring harness.

(2) We do not require a February 28, 2007, compliance time because that date has passed.

(3) We have used the helicopter S/N 0005 up to and including S/N 0576 as stated in the service information rather than the helicopter S/N 0005 up to and including 0654 as stated in the MCAI.

(4) We refer to the compliance time as ''hours TIS'' rather than ''flight hours.''

Other FAA AD Provisions

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

(1) Alternative Methods of Compliance (AMOCs): The Manager, Safety Management Group, 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: Carroll Wright, Aviation Safety Engineer, Rotorcraft Directorate, Regulations and Policy Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5120, fax (817) 222–5961.

(2) Airworthy Product: Use only FAA-approved corrective actions. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent) if the State of Design has an appropriate bilateral agreement with the United States. 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) Mandatory Continuing Airworthiness Information (MCAI) Emergency Airworthiness Directive No. 2007–0021–E, dated January 19, 2007, contains related information.

Material Incorporated by Reference

(j) The Director of the Federal Register approved the incorporation by reference of Eurocopter Alert Service Bulletin EC135–53A–017, Revision 1, dated June 22, 2007, under 5 U.S.C. 552(a) and 1 CFR part 51.

(k) For the Eurocopter service information identified in this AD, contact American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527.

(l) You may review copies of the Eurocopter service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas, 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 Fort Worth, Texas, on February 6, 2008.

Scott A. Horn,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. E8–2850 Filed 2–19–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–0060; Airspace Docket No. 08–ANE–91]

Establishment of Class E Airspace; Swans Island, ME

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule, request for comments.

SUMMARY: This action establishes Class E Airspace at Swans Island, ME to support a new Area Navigation (RNAV) Global Positioning System (GPS) Special Instrument Approach Procedure (IAP) that has been developed for medical flight operations into the Swans Island Heliport. This action enhances the safety and management of Instrument Flight Rule (IFR) operations by providing that required controlled airspace to protect for this approach around Swans Island, ME.

DATES: Effective 0901 UTC, June 5, 2008. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments. Comments for inclusion in the Rules Docket must be received on or before April 7, 2008.

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2008–0060; Airspace Docket No. 08–ANE–91, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov.*

You may review the public docket containing the rule, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Avenue, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT: Melinda Giddens, System Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5610.

SUPPLEMENTARY INFORMATION:

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comments, and, therefore, issues it as a direct final rule. The FAA has determined that this rule only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the effective date. If the FAA receives, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a direct final rule, and was not preceded by a notice of proposed rulemaking, interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. An electronic copy of this document may be downloaded from and comments may be submitted and reviewed at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov.* or the Federal Register's Web page at *http://www.gpoaccess.gov/fr/index.html.* Communications should identify both docket numbers and be submitted in triplicate to the address specified under the caption **ADDRESSES** above or through the Web site. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. Those wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2008–0060; Airspace Docket No. 08–ANE–91.'' The postcard will be dated stamped and returned to the commenter.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 establishes Class E airspace at Swans Island, ME providing the controlled airspace required to support the new Copter Area Navigation (RNAV) Global Positioning System (GPS) 092 Point in Space (PinS) approach developed for the Swans Island Heliport. In today's environment where speed of treatment for medical injuries is imperative, landing sites have been developed for helicopter medical Lifeguard flights or Lifeflights at the local hospitals; this is one of those sites. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is required for Instrument Flight Rules (IFR) operations and to encompass all Instrument Approach Procedures (IAPs) to the extent practical, therefore, the FAA is amending Title 14, Code of Federal Regulations (14 CFR) part 71 to establish a 6-mile radius Class E5 airspace at Swans Island, ME. Designations for Class E airspace areas extending upward from 700 feet or more above the surface of the Earth are published in FAA Order 7400.9R, signed August 15, 2007 effective September 15, 2007, which is incorporated by reference in 14 CFR part 71.1. The Class E designations listed in this document will be published subsequently in the Order.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 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.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace near the Swans Island Heliport in Swans Island, ME.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9R, Airspace Designations and Reporting Points, signed August 15, 2007, effective

September 15, 2007, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

ANE ME E5 Swans Islands, ME [New]

Swans Island Heliport
(Lat. 44°09′55″ N., long. 68°25′49″ W.)
Point in Space Coordinates
(Lat. 44°09′45″ N., long. 68°26′41″ W.)

That airspace extending upward from 700 feet above the surface of the Earth within a 6-mile radius of the Point in Space Coordinates (Lat. 44°09′45″ N., long. 68°26′41″ W.) serving the Swans Island Heliport.

* * * * *

Issued in College Park, Georgia, on January 31, 2008.

Barry A. Knight,

Acting Manager, System Support Group, Eastern Service Center.

[FR Doc. 08–717 Filed 2–19–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–0063; Airspace Docket No. 08–ANE–94]

Establishment of Class E Airspace; Rumford, ME

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule, request for comments.

SUMMARY: This action establishes Class E Airspace at Rumford, ME to support a new Area Navigation (RNAV) Global Positioning System (GPS) Special Instrument Approach Procedure (IAP) that has been developed for medical flight operations into the Rumford Community Hospital. This action enhances the safety and management of Instrument Flight Rule (IFR) operations by providing that required controlled airspace to protect for this approach around Rumford, ME.

DATES: Effective 0901 UTC, June 5, 2008. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments. Comments for inclusion in the Rules Docket must be received on or before April 7, 2008.

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2008–0063; Airspace Docket No. 08–ANE–94, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov*.

You may review the public docket containing the rule, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Avenue, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT: Melinda Giddens, System Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5610.

SUPPLEMENTARY INFORMATION:

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comments, and therefore, issues it as a direct final rule. The FAA has determined that this rule only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the effective date. If the FAA receives, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a direct final rule, and was not preceded by a notice of proposed rulemaking, interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. An electronic copy of this document may be downloaded from and comments may be submitted and reviewed at *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov*, or the Federal Register's Web page at *http://www.gpoaccess.gov/fr/index.html*. Communications should identify both docket numbers and be submitted in triplicate to the address specified under the caption **ADDRESSES** above or through the Web site. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the fule. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. Those wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2008–0063; Airspace Docket No. 08–ANE–94.'' The postcard will be date stamped and returned to the commenter.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 establishes Class E airspace at Rumford, ME providing the controlled airspace required to support the new Copter Area Navigation (RNAV) Global Positioning System (GPS) 341 Point in Space (PinS) approach developed for the Rumford Community Hospital. In today's environment where speed of treatment for medical injuries is imperative, landing sites have been developed for helicopter medical Lifeguard flights or Lifeflights at the local hospitals. Controlled airspace extending upward from 700 fee Above Ground Level (AGL) is required for Instrument Flight Rules (IFR) operations and to encompass all Instrument Approach Procedures (IAPs) to the extend practical, therefore, the

FAA is amending Title 14, Code of Federal Regulations (14 CFR) part 71 to establish a 6-mile radius Class E5 airspace at Rumford, ME. Designations for Class E airspace areas extending upward from 700 fee or more above the surface of the Earth are published in FAA Order 7400.9R, signed August 15, 2007 effective September 15, 2007, which is incorporated by reference in 14 CFR part 71.1. The Class E designations listed in this document will be published subsequently in the Order.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA had determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore, (1) is not a ''significant rule'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 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.

This rulemaking is promulgated under the authority described in Subtitle VII, part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace near the Rumford Community Hospital in Rumford, ME.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

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

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

§ 71.1 [Amended]

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

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

ANE ME E5 Rumford, ME [New]

Rumford Community Hospital
(Lat. 44°33′05″ N., long. 70°33′20″ W.)
Point in Space Coordinates
(Lat. 44°32′37″ N., long . 70°32′05″ W.)

That airspace extending upward from 700 feet above the surface of the Earth within a 6-mile radius of the Point in Space Coordinates (Lat. 44°32′37″ N., long. 70°32′05″ W.) serving the Rumford Community Hospital.

* * * * *

Issued in College Park, Georgia, on January 31, 2008.

Barry A. Knight,

Acting Manager, System Support Group, Eastern Service Center.

[FR Doc. 08–718 Filed 2–19–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–0061; Airspace Docket No. 08–ANE–92]

Establishment of Class E Airspace; Vinalhaven, ME

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule, request for comments.

SUMMARY: This action establishes Class E Airspace at Vinalhaven, ME to support a new Area Navigation (RNAV) Global Positioning System (GPS) Special Instrument Approach Procedure (IAP) that has been developed for medical flight operations into the Mary Talbot Memorial Airfield. This action enhances the safety and management of Instrument Flight Rule (IFR) operations by providing that required controlled airspace to protect for this approach around Vinalhaven, ME.

DATES: Effective 0901 UTC, June 5, 2008. The Director of the **Federal Register** approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments. Comments for inclusion in the Rules Docket must be received on or before April 7, 2008.

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building, Ground Floor, Room W12–140, 1200 New Jersey Ave., SE., Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2008–0061; Airspace Docket No. 08–ANE–92, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov*.

You may review the public docket containing the rule, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Avenue, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT: Melinda Giddens, System Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5610.

SUPPLEMENTARY INFORMATION:

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comments, and, therefore, issues it as a direct final rule. The FAA has determined that this rule only involves an established body of technical regulations for which frequent and routine amendments are necessary

to keep them operationally current. Unless a written or negative comment or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a comment in the **Federal Register** indicating that no adverse or negative comments were received and confirming the effective date. If the FAA receives, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register** and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a direct final rule, and was not preceded by a notice of proposed rulemaking, interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. An electronic copy of this document may be downloaded from and comments may be submitted and reviewed at *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov*. or the Federal Register's Web page at *http://www.gpoaccess.gov/fr/index.html*. Communications should identify both docket numbers and be submitted in triplicate to the address specified under the caption **ADDRESSES** above or through the website. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. Those wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2008–0061; Airspace Docket No. 08–ANE–92.'' The postcard will be date stamped and returned to the commenter.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 establishes Class E airspace at Vinalhaven, ME providing the controlled airspace required to support the new Copter Area Navigation (RNAV) Global Positioning System (GPS) 233 Point in Space (PinS) approach developed for the Mary Talbot Memorial Airfield. In today's environment where speed of treatment for medical injuries is imperative, landing sites have been developed for helicopter medical Lifeguard flights or Lifeflights; this is one of those sites. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is required for Instrument Flight Rules (IFR) operations and to encompass all Instrument Approach Procedures (IAPs) to the extent practical, therefore, the FAA is amending Title 14, Code of Federal Regulations (14 CFR) part 71 to establish a 6-mile radius Class E5 airspace at Vinalhaven, ME. Designations for Class E airspace areas extending upward from 700 feet or more above the surface of the Earth are published in FAA Order 7400.9R, signed August 15, 2007 effective September 15, 2007, which is incorporated by reference in 14 CFR part 71.1. The Class E designations listed in this document will be published subsequently in the Order.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 described the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes is more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace near the Mary Talbot Memorial Airfield in Vinalhaven, ME.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

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

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

71.1 [Amended]

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

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

ANE ME E5 Vinalhaven, ME [New]

Mary Talbot Memorial Airfield
(Lat. 44°04′25″ N., long. 68°49′08″ W.)
Point in Space Coordinates
(Lat. 44°04′54″ N., long. 68°48′39″ W.)

That airspace extending upward from 700 feet above the surface of the Earth within a 6-mile radius of the Point in Space Coordinates (Lat. 44°04′54″ N., long. 68°48′39″ W.) serving the Mary Talbot Memorial Airfield.

* * * * *

Issued in College Park, Georgia, on January 31, 2008.

Barry A. Knight,

Acting Manager, System Support Group, Eastern Service Center.

[FR Doc. 08–719 Filed 2–19–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9380]

RIN1545–BC45

Substitute for Return

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to returns prepared or signed by the Commissioner or other Internal Revenue Officers or employees under section 6020 of the Internal Revenue Code. These final regulations provide guidance for preparing a substitute for return under section 6020(b). Absent the existence of a return under section 6020(b), the addition to tax under section 6651(a)(2) does not apply to a nonfiler. These final regulations affect any person who fails to file a required return.

DATES: *Effective Date:* These regulations are effective on February 20, 2008.

Applicability Date: For dates of applicability, see § 301.6020–1(d).

FOR FURTHER INFORMATION CONTACT: Alicia E. Goldstein at (202) 622–3630 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations relating to substitutes for returns. These final regulations reflect amendments to 26 CFR part 301 under section 6020 of the Internal Revenue Code. Section 301.6020–1 of the Procedure and Administration Regulations provides for the preparation or execution of returns by authorized Internal Revenue Officers or employees. Section 1301(a) of the Taxpayer Bill of Rights Act of 1996, Public Law 104–168 (110 Stat. 1452), amended section 6651 to add subsection (g)(2), which provides that, for returns due after July 30, 1996 (determined without regard to extensions), a return made under section 6020(b) shall be treated as a return filed by the taxpayer for purposes of determining the amount of the additions to tax under section 6651(a)(2) and (a)(3). Absent the existence of a return under section 6020(b), the addition to tax under section 6651(a)(2) does not apply to a nonfiler.

In *Cabirac* v. *Commissioner,* 120 T.C. 163 (2003), *aff'd in an unpublished opinion,* No. 03–3157 (3rd Cir. Feb. 10, 2004), and *Spurlock* v. *Commissioner,* T.C. Memo. 2003–124, the Tax Court found that the Service did not establish that it had prepared and signed a return in accordance with section 6020(b). In *Spurlock,* the Tax Court held that a return for section 6020(b) purposes must be subscribed, contain sufficient information from which to compute the taxpayer's tax liability, and the return and any attachments must ''purport to be a return.'' *Spurlock,* T.C.Memo. 2003–124 at 27. These decisions prompted the IRS and the Treasury Department to revise its rules for the preparation or execution of returns by authorized Internal Revenue Officer or employees. Temporary regulations and a notice of proposed rulemaking (Reg–131739–03) were published in the **Federal Register** on July 18, 2005 [70 FR 41165].

The IRS and the Treasury Department received written public comments responding to the proposed regulations. After consideration of the comments received, the proposed regulations are adopted as revised by this Treasury decision. These final regulations generally retain the provisions of the proposed regulations with one minor change as explained in more detail in the preamble.

Explanation of Provisions and Summary of Comments

The regulations provide that a document (or set of documents) signed by an authorized Internal Revenue Officer or employee is a return under section 6020(b) if the document (or set of documents) identifies the taxpayer by name and taxpayer identification number, contains sufficient information from which to compute the taxpayer's tax liability, and the document (or set of documents) purports to be a return under section 6020(b). A Form 13496, ''IRC Section 6020(b) Certification,'' or any other form that an authorized Internal Revenue Officer or employee signs and uses to identify a document (or set of documents) containing the information set forth in this preamble as a section 6020(b) return, and the documents identified, constitute a valid section 6020(b) return.

Further, because the Service prepares and signs section 6020(b) returns both by hand and through automated means, these regulations provide that a name or title of an Internal Revenue Officer or employee appearing upon a return made in accordance with section 6020(b) is sufficient as a subscription by that officer or employee to adopt the document as a return for the taxpayer without regard to whether the name or title is handwritten, stamped, typed, printed or otherwise mechanically affixed to the document. The document or set of documents and subscription may be in written or electronic form.

These final regulations do not alter the method for the preparation of returns under section 6020(a) as provided in TD 6498. Under section 6020(a), if the taxpayer consents to disclose necessary information, the Service may prepare a return on behalf of a taxpayer, and if the taxpayer signs the return, the Service will receive it as the taxpayer's return.

The proposed regulations generated numerous comments. For the most part, the comments were variations of ten different form letters. The commentators took issue with the regulation because the signature on the certification was not signed under oath, and therefore not signed under a penalty of perjury; because a ''set of documents'' could substitute for a return instead of the form that would have been used by the taxpayer; and because the IRS was making the decision of who should file a tax return.

After considering these comments, the IRS and the Treasury Department have concluded that they provide no basis for adopting changes in the final regulations. In particular, the argument that the IRS should not be able to decide who should file a tax return is without merit. The requirement to file a tax return is not voluntary and is clearly set forth in sections 6011(a) and 6012(a).

There has been one minor change to the text of the temporary regulations. The temporary regulation provided that any return made in accordance with paragraph (b)(1) of this section and signed by the Commissioner or other authorized Internal Revenue Officer or employee shall be prima facie good and sufficient for all legal purposes. In 2005, new language was added to the Bankruptcy Code at 11 U.S.C. 523(a) that specifically provided that a section 6020(b) return is not a return for dischargeability purposes. Therefore, the portion of the temporary regulation that stated that the return was sufficient for all legal purposes is no longer correct. The language in the regulation has been changed to state that a section 6020(b) return is sufficient for all legal purposes ''except insofar as any Federal statute expressly provides otherwise.''

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 also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations 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 Alicia Goldstein, Office of the Associate Chief Counsel (Procedure and Administration).

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

■ **Paragraph 1.** The authority citation for part 301 continues to read in part as follows:

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

§ 301.6020–1T [Removed]

■ **Par. 2.** Section 301.6020–1T is removed.

■ **Par. 3.** Section 301.6020–1 is added to read as follows:

§ 301.6020–1 Returns prepared or executed by the Commissioner or other Internal Revenue Officers.

(a) *Preparation of returns*—(1) *In general.* If any person required by the Internal Revenue Code or by the regulations to make a return fails to make such return, it may be prepared by the Commissioner or other authorized Internal Revenue Officer or employee provided such person consents to disclose all information necessary for the preparation of such return. The return upon being signed by the person required to make it shall be received by the Commissioner as the return of such person.

(2) *Responsibility of person for whom return is prepared.* A person for whom a return is prepared in accordance with paragraph (a)(1) of this section shall for all legal purposes remain responsible for the correctness of the return to the same extent as if the return had been prepared by him.

(b) *Execution of returns*—(1) *In general.* If any person required by the Internal Revenue Code or by the regulations to make a return (other than a declaration of estimated tax required under section 6654 or 6655) fails to make such return at the time prescribed therefore, or makes, willfully or otherwise, a false, fraudulent or frivolous return, the Commissioner or other authorized Internal Revenue Officer or employee shall make such return from his own knowledge and from such information as he can obtain through testimony or otherwise. The Commissioner or other authorized Internal Revenue Officer or employee may make the return by gathering information and making computations through electronic, automated or other means to make a determination of the taxpayer's tax liability.

(2) *Form of the return.* A document (or set of documents) signed by the Commissioner or other authorized Internal Revenue Officer or employee shall be a return for a person described in paragraph (b)(1) of this section if the document (or set of documents) identifies the taxpayer by name and taxpayer identification number, contains sufficient information from which to compute the taxpayer's tax liability, and purports to be a return. A Form 13496, ''IRC Section 6020(b) Certification,'' or any other form that an authorized Internal Revenue Officer or employee signs and uses to identify a set of documents containing the information set forth in this paragraph as a section 6020(b) return, and the documents identified, constitute a return under section 6020(b). A return may be signed by the name or title of an Internal Revenue Officer or employee being handwritten, stamped, typed, printed or otherwise mechanically affixed to the return, so long as that name or title was placed on the document to signify that the Internal Revenue Officer or employee adopted the document as a return for the taxpayer. The document and signature may be in written or electronic form.

(3) *Status of returns.* Any return made in accordance with paragraph (b)(1) of this section and signed by the Commissioner or other authorized Internal Revenue Officer or employee shall be good and sufficient for all legal purposes except insofar as any Federal statute expressly provides otherwise. Furthermore, the return shall be treated as the return filed by the taxpayer for purposes of determining the amount of the addition to tax under sections 6651(a)(2) and (3).

(4) *Deficiency procedures.* For deficiency procedures in the case of income, estate, and gift taxes, see sections 6211 through 6216, inclusive, and §§ 301.6211–1 through 301.6215–1, inclusive.

(5) *Employment status procedures.* For pre-assessment procedures in employment taxes cases involving worker classification, see section 7436 (proceedings for determination of employment status).

(6) *Examples.* The application of this paragraph (b) is illustrated by the following examples:

Example 1. Individual A, a calendar-year taxpayer, fails to file his 2003 return. Employee X, an Internal Revenue Service employee, opens an examination related to A's 2003 taxable year. At the end of the examination, X completes a Form 13496, ''IRC Section 6020(b) Certification,'' and attached to it the documents listed on the form. Those documents explain examination changes and provide sufficient information to compute A's tax liability. The Form 13496 provides that the Service employee identified on the form certifies that the attached pages constitute a return under section 6020(b). When X signs the certification package, the package constitutes a return under paragraph (b) of this section because the package identifies A by name, contains A's taxpayer identifying number (TIN), has sufficient information to compute A's tax liability, and contains a statement stating that it constitutes a return under section 6020(b). In addition, the Service will determine the amount of the additions to tax under section 6651(a)(2) by treating the section 6020(b) return as the return filed by the taxpayer. Likewise, the Service will determine the amount of any addition to tax under section 6651(a)(3), which arises only after notice and demand for payment, by treating the section 6020(b) return as the return filed by the taxpayer.

Example 2. Same facts as in *Example 1*, except that, after performing the examination, X does not compile any examination documents together as a related set of documents. X also does not sign and complete the Form 13496 nor associate the forms explaining examination changes with any other document. Because X did not sign any document stating that it constitutes a return under section 6020(b) and the documents otherwise do not purport to be a section 6020(b) return, the documents do not constitute a return under section 6020(b). Therefore, the Service cannot determine the section 6651(a)(2) addition to tax against nonfiler A for A's 2003 taxable year on the basis of those documents.

Example 3. Individual C, a calendar-year taxpayer, fails to file his 2003 return. The Service determines through its automated internal matching programs that C received

reportable income and failed to file a return. The Service, again through its automated systems, generates a Letter 2566, ''30 Day Proposed Assessment (SFR–01) 910 SC/CG.'' This letter contains C's name, TIN, and has sufficient information to compute C's tax liability. Contemporaneous with the creation of the Letter 2566, the Service, through its automated system, electronically creates and stores a certification stating that the electronic data contained as part of C's account constitutes a valid return under section 6020(b) as of that date. Further, the electronic data includes the signature of the Service employee authorized to sign the section 6020(b) return upon its creation. Although the signature is stored electronically, it can appear as a printed name when the Service requests a paper copy of the certification. The electronically created information, signature, and certification is a return under section 6020(b). The Service will treat that return as the return filed by the taxpayer in determining the amount of the section 6651(a)(2) addition to tax with respect to C's 2003 taxable year. Likewise, the Service will determine the amount of any addition to tax under section 6651(a)(3), which arises only after notice and demand for payment, by treating the section 6020(b) return as the return filed by the taxpayer.

Example 4. Corporation M, a quarterly taxpayer, fails to file a Form 941, ''Employer's Quarterly Federal Tax Return,'' for the second quarter of 2004. Q, a Service employee authorized to sign returns under section 6020(b), prepares a Form 941 by hand, stating Corporation M's name, address, and TIN. Q completes the Form 941 by entering line item amounts, including the tax due, and then signs the document. The Form 941 that Q prepared and signed constitutes a section 6020(b) return because the Form 941 purports to be a return under section 6020(b), the form contains M's name and TIN, and it includes sufficient information to compute M's tax liability for the second quarter of 2004.

(c) *Cross references*—(1) For provisions that a return executed by the Commissioner or other authorized Internal Revenue Officer or employee will not start the running of the period of limitations on assessment and collection, see section 6501(b)(3) and § 301.6501(b)-1(e).

(2) For determining the period of limitations on collection after assessment of a liability on a return executed by the Commissioner or other authorized Internal Revenue Officer or employee, see section 6502 and § 301.6502–1.

(3) For additions to the tax and additional amounts for failure to file returns, see section 6651 and § 301.6651–1, and section 6652 and § 301.6652–1, respectively.

(4) For additions to the tax for failure to pay tax, see section 6651 and § 301.6651–1.

(5) For criminal penalties for willful failure to make returns, see sections 7201, 7202 and 7203.

(6) For criminal penalties for willfully making false or fraudulent returns, see sections 7206 and 7207.

(7) For civil penalties for filing frivolous income tax returns, see section 6702.

(8) For authority to examine books and witnesses, see section 7602 and § 301.7602–1.

(d) *Effective/Applicability date.* This section is applicable on February 20, 2008.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

Approved: February 5, 2008.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E8–3100 Filed 2–19–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[USCG–2008–0046]

Drawbridge Operation Regulations; Taunton River, Fall River and Somerset, MA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the old Brightman Street bascule bridge across the Taunton River at mile 1.8, between Fall River and Somerset, Massachusetts. Under this temporary deviation, in effect from 6 a.m. on February 16, 2008 through 5 p.m. on March 2, 2008, the bridge shall open on signal after a one-hour advance notice is given by calling (508) 672–5111, or VHF channel 13 and 16. This deviation is necessary to facilitate scheduled bridge maintenance.

DATES: This deviation is effective from 6 a.m. on February 16, 2008 through 5 p.m. on March 2, 2008.

ADDRESSES: Materials referred to in this document are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, 408 Atlantic Avenue, Boston, Massachusetts 02110, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223–8364. The First Coast Guard District Bridge Branch Office maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: John McDonald, Project Officer, First Coast Guard District, at (617) 223–8364.

SUPPLEMENTARY INFORMATION: The old Brightman Street bascule bridge, across the Taunton River at mile 1.8, between Fall River and Somerset, Massachusetts, has a vertical clearance in the closed position of 27 feet at mean high water and 31 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 1117.619.

The owner of the bridge, Massachusetts Highway Department (MHD), requested a temporary deviation to facilitate scheduled bridge maintenance and structural repairs to the sidewalks at the old Brightman Street bascule bridge.

Under this temporary deviation, in effect from 6 a.m. on February 16, 2008 through 5 p.m. on March 2, 2008, the old Brightman Street bascule bridge shall open on signal after at least a one-hour advance notice is given by calling (508) 672–5111 or VHF channel 13 and 16.

This work was scheduled during the time of year when the bridge seldom opens. The recreational boat marinas were contacted and have no objection to the one-hour advance notice.

An 18′ × 43′ construction work barge may be located in the channel during the prosecution of this bridge maintenance. The work barge will move upon request by calling the bridge tender either on the land line (508) 672–5111 or on VHF channel 13 and 16.

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

Should the bridge maintenance authorized by this temporary deviation be completed before the end of the effective period published in this notice, the Coast Guard will rescind the remainder of this temporary deviation, and the bridge shall be returned to its normal operating schedule. Notice of the above action shall be provided to the public in the Local Notice to Mariners and the **Federal Register**, where practicable.

Dated: February 12, 2008.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. 08–781 Filed 2–15–08; 11:47 am]

BILLING CODE 4910–15–M

POSTAL SERVICE

39 CFR Part 20

Revised Standards for First-Class Mail International™ Service

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service will adopt new mailing standards and prices for First-Class Mail International service on May 12, 2008, which reflects current First-Class Mail domestic shape-based standards. Our revisions recognize that each mailpiece shape—letter, flat, and parcel—has substantially different processing costs that needs to be covered. Currently, the First-Class Mail International pricing structure does not have a distinction between letter-size, flat-size, and package (small packet) pricing.

DATES: *Effective Date:* 12:01 a.m. on May 12, 2008.

FOR FURTHER INFORMATION CONTACT: Christy Bonning, 202–268–2108.

SUPPLEMENTARY INFORMATION: The Postal Service's classification changes and new pricing structure for First-Class Mail International items will enhance efficiency and assist that items mailed at First-Class Mail International prices cover their costs.

The Postal Service adopts the following changes to *Mailing Standards of the United States Postal Service*, International Mail Manual (IMM®), which is incorporated by reference in the *Code of Federal Regulations*. See 39 CFR Part 20.

List of Subjects in 39 CFR Part 20

Foreign relations, International postal services.

■ Accordingly, 39 CFR part 20 is amended as follows:

PART 20—[AMENDED]

■ 1. The authority citation for 39 CFR part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408, 3622, 3632, and 3633.

■ 2. Revise the following sections of *Mailing Standards of the United States Postal Service*, International Mail Manual (IMM), as follows:

1 International Mail Services

* * * * *

140 International Mail Categories

* * * * *

[Delete 142 in its entirety (moving relevant information to 241, as incorporated later in this text), and renumber 143 as 142.]

* * * * *

2 Conditions for Mailing

* * * * *

240 First-Class Mail International

[Revise 241 (including relevant information previously incorporated in 142 to read as follows:]

241 Description

241.1 General

The First-Class Mail International classification encompasses all categories of international mail that prior to May 14, 2007, were categorized as airmail letter-post and economy letter-post, postcards and postal cards, printed matter, and small packets that were formerly categorized as LC (letters and cards) and AO (other articles).

241.2 Mailable Matter

Any article that is otherwise acceptable and not prohibited by the Postal Service or country of destination, subject to applicable weight and size limits, may be mailed at the First-Class Mail International price.

241.3 Color

Light-colored envelopes and cards that do not interfere with the reading of the address and postmark must be used. Do not use brilliant colors.

241.4 Quality

Envelopes, cards, and packaging materials must be constructed strong enough to withstand normal handling. Highly glazed paper or paper with a design that affects readability or processing is not acceptable.

241.5 Window Envelopes

Window envelopes must be used under the following conditions:

a. The address window must be parallel with the length of the envelope.

b. The address window must be in the lower portion of the address side.

c. Nothing but the name, address, and any key number used by the mailer may appear through the address window.

d. The return address should appear in the upper-left corner. If there is no return address and the delivery address does not show through the window, the piece will be handled as undeliverable mail.

e. The address disclosed through the window must be on white paper or paper of a very light color.

f. When used for registered mail, window envelopes must conform to the conditions in DMM 503.

g. Open panel envelopes, i.e., those in which the panel is not covered with a transparent material, are not acceptable in international mail.

241.6 Bordered Envelopes and Cards

Envelopes and cards that have green-colored bars or red- and blue-striped borders may be used for the sending of First-Class Mail International items.

242 Postage

[Revise 242.1 as follows:]

242.1 Prices

See the Individual Country Listings for First-Class Mail International postage prices that are applicable to specific destination countries and territorial possessions. The country-specific price group designations that apply to First-Class Mail International are as follows:

Afghanistan	6	Dominica	9	Lebanon	8	San Marino	5
Albania	4	Dominican Republic	9	Lesotho	7	Sao Tome and Principe	7
Algeria	8	Ecuador	9	Liberia	7	Saudi Arabia	8
Andorra	5	Egypt	8	Libya	8	Senegal	7
Angola	7	El Salvador	9	Liechtenstein	5	Serbia-Montenegro	5
Anguilla	9	Equatorial Guinea	7	Lithuania	4	Seychelles	7
Antigua and Barbuda	9	Eritrea	7	Luxembourg	5	Sierra Leone	7
Argentina	9	Estonia	4	Macao	6	Singapore	6
Armenia	4	Ethiopia	8	Macedonia, Republic of	4	Slovak Republic	5
Aruba	9	Falkland Islands	9	Madagascar	7	Slovenia	5
Ascension	7	Faroe Islands	5	Malawi	7	Solomon Islands	6
Australia	3	Fiji	6	Malaysia	6	Somalia	[1] na
Austria	5	Finland	5	Maldives	6	South Africa	7
Azerbaijan	4	France	5	Mali	7	Spain	5
Bahamas	9	French Guiana	9	Malta	5	Sri Lanka	6
Bahrain	8	French Polynesia	6	Martinique	9	Sudan	7

Bangladesh	6	Gabon	7	Mauritania	7	Suriname	9
Barbados	9	Gambia	7	Mauritius	7	Swaziland	7
Belarus	4	Georgia, Republic of	4	Mexico	2	Sweden	5
Belgium	5	Germany	5	Moldova	4	Switzerland	5
Belize	9	Ghana	7	Mongolia	6	Syrian Arab Republic	8
Benin	7	Gibraltar	5	Montserrat	9	Taiwan	6
Bermuda	9	Great Britain and Northern Ireland.	5	Morocco	8	Tajikistan	6
Bhutan	6	Greece	5	Mozambique	7	Tanzania	7
Bolivia	9	Greenland	5	Namibia	7	Thailand	6
Bosnia-Herzegovina	4	Grenada	9	Nauru	6	Togo	7
Botswana	7	Guadeloupe	9	Nepal	6	Tonga	6
Brazil	9	Guatemala	9	Netherlands	5	Trinidad and Tobago	9
British Virgin Islands	9	Guinea	7	Netherlands Antilles	9	Tristan da Cunha	7
Brunei Darussalam	6	Guinea-Bissau	7	New Caledonia	6	Tunisia	8
Bulgaria	4	Guyana	9	New Zealand	6	Turkey	4
Burkina Faso	7	Haiti	9	Nicaragua	9	Turkmenistan	6
Burma	6	Honduras	9	Niger	7	Turks and Caicos Islands	9
Burundi	7	Hong Kong	3	Nigeria	7	Tuvalu	6
Cambodia	6	Hungary	4	Norway	5	Uganda	7
Cameroon	7	Iceland	5	Oman	8	Ukraine	4
Canada	1	India	6	Pakistan	6	United Arab Emirates	8
Cape Verde	7	Indonesia	6	Panama	9	Uruguay	9
Cayman Islands	9	Iran	8	Papua New Guinea	6	Uzbekistan	6
Central African Republic	7	Iraq	8	Paraguay	9	Vanuatu	6
Chad	7	Ireland	5	Peru	9	Vatican City	5
Chile	9	Israel	8	Philippines	6	Venezuela	9
China	3	Italy	5	Pitcairn Island	6	Vietnam	6
Colombia	9	Jamaica	9	Poland	4	Wallis and Futuna Islands.	6
Comoros	7	Japan	3	Portugal	5	Western Samoa	6
Congo (Brazzaville), Republic of the.	7	Jordan	8	Qatar	8	Yemen	8
Congo, Democratic Republic of the.	7	Kazakhstan	6	Reunion	9	Zambia	7
Costa Rica	9	Kenya	7	Romania	4	Zimbabwe	7
Cote d Ivoire (Ivory Coast)	7	Kiribati	6	Russia	4		
Croatia	4	Korea, Democratic People's Republic of (North Korea).	6	Rwanda	7		
Cuba	9	Korea, Republic of (South Korea).	3	Saint Christopher and Nevis.	9		
Cyprus	4	Kuwait	8	Saint Helena	7		
Czech Republic	4	Kyrgyzstan	6	Saint Lucia	9		
Denmark	5	Laos	6	Saint Pierre and Miquelon.	4		
Djibouti	7	Latvia	4	Saint Vincent and the Grenadines.	9		

[1] na = First-Class Mail International is not available.

[Renumber current 242.2 as 242.3. Add new 242.2 as follows:]

242.2 Price Computation

First-Class Mail International prices are charged per ounce or fraction thereof; any fraction of an ounce is rounded up to the next whole ounce. For example, if a piece weighs 1.2 ounces, the weight (postage) increment is 2 ounces. The minimum postage per addressed piece, except postcards, is that for a piece weighing 1 ounce.

242.3 Payment of Postage

* * * * *

243 Physical Characteristics

[Delete current 243.1 in its entirety. Revise and renumber 250 through 254.6 as 243.1 through 243.17 as follows:]

243.1 Postcards

243.11 General

a. Postcards consist of single cards sent without a wrapper or envelope. Folded (double) cards must be mailed in envelopes at the First-Class Mail International letter price.

b. Postcards must be made of cardboard or paper that meets the material and color specifications in *241*.3 and 241.4.

243.12 Addressing

See 122.

243.13 Postage Prices and Fees

The postage prices for postcards are as follows:

a. Canada and Mexico—$0.72

b. All other countries—$0.94

243.14 Description

243.141 Reply—Paid Cards

Reply-paid cards are not accepted in international mail, except as provided in 132.2.

243.142 Privately Manufactured Postcards

Privately manufactured postcards, except picture postcards, must bear the heading *Postcard*.

243.143 Weight Limit

Postcards must meet the requirements in 241.4.

243.144 Dimensions

Each postcard claimed at a card price must be:

a. Rectangular.

b. Not less than 3½ inches high or 5½ inches long or 0.007 inch thick.

c. Not more than 4¼ inches high or 6 inches long or 0.016 inch thick.

Note: Unenclosed cards exceeding the size limits for postcards are mailable at the First-Class Mail International letter price if they do not exceed 4¾ inches high or 9¼ inches long.

243.15 Marking

The sender should mark postcards *Par Avion* or affix Label 19–A, *Par Avion Airmail,* or Label 19–B, *Par Avion Airmail,* on the left side on the front.

243.151 Right Half of Postcard

The right half of the address side of a card must be reserved for the address of the addressee and postal notations or labels.

243.152 Left Half and Reverse Side

The sender may use the left half of the address side of the card and the reverse side for a message or permissible attachments. The sender must use the upper-left half of the address side for his or her return address. (Unless they bear the name and address of the sender, undeliverable cards are disposed of in the country of destination.)

243.16 Permitted Attachments

The following may be glued on the left half of the address side of a card, or on the side opposite the address side, if they are made of paper or other thin material and adhere completely to the card:

a. Clippings of any kind.

b. Illustrations or photographs.

c. Labels other than address labels.

d. Stamps of any kind, except stamps likely to be confused with postage stamps, must not be placed on the address side of the card.

e. Address labels or address tabs that may be glued to the address side of the card.

243.17 Nonpermitted Attachments

A card may not bear an attachment that is:

a. Other than paper.

b. Not totally adhered to the card surface.

c. An encumbrance to postal processing.

[Delete sections not used in 250 Postcards: 251.3 in its entirety, Titles of 253 and 254.] [Revise title of 243.2 as follows:]

243.2 Letters

[Renumber 243.21 as 243.22 and add new 243.21 as follows:]

243.21 Weight Limit

The weight limit is 3.5 ounces. (First-Class Mail International letter-size pieces over 3.5 ounces are charged First-Class Mail International flat-size prices.)

[Revise renumbered 243.22 as follows:]

243.22 Dimensions

Letter-size mail must be rectangular and meet the following dimensions:

a. Not less than 5½ inches long or 3½ inches high, or 0.007-inch thick.

b. Not more than 11½ inches long or more than 6⅛ inches high or more than ¼-inch thick.

Note: For the purpose of determining mailability or machinability of a letter-sized piece (see 243.23): the length is the dimension parallel to the delivery address as read, and the height is the dimension perpendicular to the length.

[Delete old 243.22 and 243.23 (renumbered 243.23 and 243.24). Revise and renumber old 243.24 (renumbered 243.25) as 243.23 as follows:]

243.23 Nonmachinable Surcharge

A $0.20 per-piece surcharge applies to a First-Class Mail International letter, regardless of weight, with one or more of the following nonmachinable characteristics:

a. Has an aspect ratio (length divided by height) of less than 1.3 or more than 2.5.

b. Is polybagged, polywrapped, or enclosed in any plastic material.

c. Have clasps, strings, buttons, or similar closure devices.

d. Contains items such as pens, pencils, or loose keys or coins that cause the thickness of the mailpiece to be uneven.

e. Is too rigid (does not bend easily when subjected to a transport belt tension of 40 pounds around an 11-inch diameter turn).

f. Is more than 4¼ inches high or 6 inches long and less than 0.009 inch thick.

g. Has a delivery address parallel to the shorter dimension of the mailpiece.

h. Is a self-mailer with a final folded edge perpendicular to the address, if the piece is not folded and secured according to DMM 201.3.13.1.

i. Is a booklet-type piece with the bound edge (spine) along the shorter dimension of the piece or at the top, unless prepared according to DMM 201.3.13.2.

[Add new 243.3 through 243.432 as follows:]

243.3 Large Envelopes (Flats)

243.31 Weight Limit

The weight limit is 4 pounds.

243.32 Dimensions and Characteristics

Large envelopes (flats) must meet the following dimensions and characteristics:

a. More than 11½ inches long, or more than 6⅛ inches high or more than ¼-inch thick.

b. Not more than 15 inches long, or more than 12 inches high, or more than ¾-inch thick.

c. Flexible (see 243.33).

d. Rectangular.

e. Uniformly thick as stated in 243.34.

Note: The length of a large envelope (flat) is the longest dimension. The height is the dimension perpendicular to the length. A First-Class Mail International large envelope (flat) that does not meet the standards in 243.3 is not eligible for large envelope (flat) size price and are charged the applicable package (small packet) price.

243.33 Minimum Flexibility

Large envelopes (flats) must be flexible. Boxes, with or without hinges, gaps, or breaks that allow the piece to bend, are not considered large envelopes (flats). Tight envelopes or wrappers that are filled with one or more boxes are not considered large envelopes (flats). At the customer's option, a customer may perform the following test on their own mailpieces. When a postal employee observes a customer demonstrating that a flat-size piece is flexible according to these standards, the employee does not need to perform the test. Test flats as follows:

a. All large envelopes (flats) (see Exhibit 243.33a):

1. Place the piece with the length parallel to the edge of a flat surface and extend the piece halfway off the surface.

2. Press down on the piece at a point 1 inch from the outer edge, in the center of the piece's length, exerting steady pressure.

3. The piece is not flexible if it cannot bend at least 1 inch vertically without being damaged.

4. The piece is flexible if it can bend at least 1 inch vertically without being damaged and it does not contain a rigid insert. No further testing is necessary.

5. Test the piece according to 243.33b or 243.33c below if it can bend at least 1 inch vertically without being damaged and it contains a rigid insert.

Exhibit 243.33a Flexibility Test—All Large Envelopes (Flats)

(See examples on Postal Explorer at pe.usps.com—click on **Federal Register** *Notices in the left frame.)*

b. Large envelopes 10 inches or longer that pass the test in 243.33a and contain a rigid insert (see Exhibit 243.33b):

1. Place the piece with the length perpendicular to the edge of a flat surface and extend the piece 5 inches off the surface.

2. Press down on the piece at a point 1 inch from the outer edge, in the center of the piece's width, exerting steady pressure.

3. Turn the piece around and repeat steps 1 and 2. The piece is flexible if both ends can bend at least 2 inches vertically without being damaged.

Exhibit 243.33b Flexibility Test—Large Envelopes (Flats) 10 Inches or Longer

(See examples on Postal Explorer at pe.usps.com—click on **Federal Register** *Notices in the left frame.)*

c. Large envelopes less than 10 inches long that pass the test in 243.33a and contain a rigid insert (see Exhibit 243.33c):

1. Place the piece with the length perpendicular to the edge of a flat surface and extend the piece one-half of its length off the surface.

2. Press down on the piece at a point 1 inch from the outer edge, in the center of the piece's width, exerting steady pressure.

3. Turn the piece around and repeat steps 1 and 2. The piece is flexible if both ends can bend at least 1 inch vertically without being damaged.

Exhibit 243.33c Flexibility Test—Large Envelopes (Flats) Less Than 10 Inches Long

(*See examples on Postal Explorer at pe.usps.com—click on* **Federal Register** *Notices in the left frame.)*

243.34 Uniform Thickness

Large envelopes (Flats) must be uniformly thick so that any bumps, protrusions, or other irregularities do not cause more than ¼-inch variance in thickness. When determining variance in thickness, exclude the outside edges of a mailpiece (1 inch from each edge) when the contents do not extend into those edges. Also, exclude the selvage of any polywrap covering from this determination. Mailers must secure nonpaper contents to prevent shifting of more than 2 inches within the mailpiece if shifting would cause the piece to be nonuniform in thickness or would result in the contents bursting out of the mailpiece.

243.4 Packages (Small Packets)

243.41 Weight Limit

The weight limit is 4 pounds.

243.42 Dimensions

Packages (small packets) must be within the following dimensions:

a. Maximum length: 24 inches. Length is the longest dimension.

b. Maximum length, height, and depth (thickness) combined: 36 inches.

c. Minimum size: Large enough to accommodate the postage, address, customs form, and other required elements on the address side.

243.43 Rolls

243.431 Weight Limit

The weight limit is 4 pounds.

243.432 Dimensions

Rolls must be within the following dimensions:

a. Minimum length: 4 inches.

b. Minimum length plus twice the diameter combined: 6¾ inches.

c. Maximum length: 36 inches.

d. Maximum length plus twice the diameter combined: 42 inches.

244 Mail Preparation

* * * * *

244.2 Marking

[Revise item ''a'' as follows:]

a. First-Class Mail International packages (small packets) and rolls, which because of their size, shape, or configuration might be mistaken for another category of international mail, should be marked ''LETTER-POST'' on the address side of the mailpiece.

* * * * *

[Delete item ''d'' in its entirety]

* * * * *

244.4 Packaging

[Renumber 244.4a–d as 244.4c–f. Add new 244.4a and 244.4b as follows:]

a. Mailers must package mailpieces to withstand normal transit and handling without content or package breakage, injury to USPS employees, or damage to other mail or USPS equipment.

b. Mailers must package their contents to prevent their deterioration.

* * * * *

[Revise renumbered 244.4f as follows:]

f. First-Class Mail International items, in card form, are permitted, so long as their overall dimensions do not exceed 4¾ inches or 9¼ inches. See 243.144.

* * * * *

250 Reserved

* * * * *

[Add new section after 943.2 and before World Map as follows:]

COUNTRY RATE GROUPS AND WEIGHT LIMITS

Country	[1] GXG rate group [5]	[1] GXG max wt. lbs.	[2] PMI rate group [5]	[2] PMI max wt. lbs.	[2] PMI flat-rate box max wt. lbs.	[3] EMI rate group [5]	[3] EMI max wt. lbs.	[4] FCMI rate group [5]	[4] FCMI letters max wt. oz.	[4] FCMI letters max wt. lbs.	[4] FCMI letters max wt. lbs.
Afghanistan	6	70	6	66	20	0	0	6	3.5	4	4
Albania	4	70	4	44	20	4	66	4	3.5	4	4
Algeria	0	0	8	44	20	8	44	8	3.5	4	4
Andorra	5	70	5	66	20	5	66	5	3.5	4	4
Angola	4	70	7	44	20	7	44	7	3.5	4	4
Anguilla	7	70	9	22	20	9	55	9	3.5	4	4
Antigua and Barbuda	7	70	9	22	20	0	0	9	3.5	4	4
Argentina	8	70	9	44	20	9	44	9	3.5	4	4
Armenia	4	70	4	44	20	4	44	4	3.5	4	4
Aruba	7	70	9	44	20	9	44	9	3.5	4	4
Ascension	0	0	0	0	0	0	0	7	3.5	4	4
Australia	6	70	3	66	20	3	44	3	3.5	4	4
Austria	5	70	5	66	20	5	70	5	3.5	4	4
Azerbaijan	4	70	4	70	20	4	70	4	3.5	4	4
Bahamas	7	70	9	22	20	9	22	9	3.5	4	4
Bahrain	6	70	8	44	20	8	44	8	3.5	4	4
Bangladesh	6	70	6	44	20	6	44	6	3.5	4	4
Barbados	7	70	9	44	20	9	66	9	3.5	4	4
Belarus	4	70	4	66	20	4	44	4	3.5	4	4
Belgium	3	70	5	66	20	5	66	5	3.5	4	4
Belize	8	70	9	44	20	9	66	9	3.5	4	4
Benin	4	70	7	66	20	7	66	7	3.5	4	4

COUNTRY RATE GROUPS AND WEIGHT LIMITS—Continued

Country	[1] GXG rate group [5]	[1] GXG max wt. lbs.	[2] PMI rate group [5]	[2] PMI max wt. lbs.	[2] PMI flat-rate box max wt. lbs.	[3] EMI rate group [5]	[3] EMI max wt. lbs.	[4] FCMI rate group [5]	[4] FCMI letters max wt. oz.	[4] FCMI letters max wt. lbs.	[4] FCMI letters max wt. lbs.
Bermuda	7	70	9	44	20	9	44	9	3.5	4	4
Bhutan	6	70	6	66	20	6	66	6	3.5	4	4
Bolivia	8	70	9	70	20	9	66	9	3.5	4	4
Bosnia-Herzegovina	4	70	4	44	20	4	66	4	3.5	4	4
Botswana	4	70	7	66	20	7	66	7	3.5	4	4
Brazil	8	70	9	66	20	9	66	9	3.5	4	4
British Virgin Islands	7	70	9	44	20	0	0	9	3.5	4	4
Brunei Darussalam	4	70	6	44	20	6	66	6	3.5	4	4
Bulgaria	4	70	4	70	20	4	66	4	3.5	4	4
Burkina Faso	4	70	7	66	20	7	70	7	3.5	4	4
Burma	0	0	6	22	20	0	0	6	3.5	4	4
Burundi	4	70	7	66	20	7	66	7	3.5	4	4
Cambodia	8	70	6	66	20	6	66	6	3.5	4	4
Cameroon	4	70	7	66	20	7	44	7	3.5	4	4
Canada	1	70	1	66	20	1	66	1	3.5	4	4
Cape Verde	4	70	7	44	20	7	66	7	3.5	4	4
Cayman Islands	7	70	9	44	20	9	44	9	3.5	4	4
Central African Republic	0	0	7	66	20	7	66	7	3.5	4	4
Chad	4	70	7	44	20	7	66	7	3.5	4	4
Chile	8	70	9	44	20	9	66	9	3.5	4	4
China	6	70	3	66	20	3	66	3	3.5	4	4
Colombia	8	70	9	66	20	9	44	9	3.5	4	4
Comoros	0	0	7	44	20	0	0	7	3.5	4	4
Congo (Brazzaville) Republic of the	4	70	7	44	20	7	66	7	3.5	4	4
Congo, Democratic Republic of the	4	70	7	66	20	7	66	7	3.5	4	4
Costa Rica	8	70	9	66	20	9	66	9	3.5	4	4
Cote d Ivoire (Ivory Coast)	4	70	7	66	20	7	66	7	3.5	4	4
Croatia	4	70	4	66	20	4	66	4	3.5	4	4
Cuba	0	0	0	0	0	0	0	9	3.5	4	4
Cyprus	6	70	4	70	20	4	70	4	3.5	4	4
Czech Republic	4	70	4	66	20	4	66	4	3.5	4	4
Denmark	5	70	5	66	20	5	66	5	3.5	4	4
Djibouti	4	70	7	44	20	7	44	7	3.5	4	4
Dominica	7	70	9	44	20	9	44	9	3.5	4	4
Dominican Republic	7	70	9	44	20	9	66	9	3.5	4	4
Ecuador	8	70	9	66	20	9	66	9	3.5	4	4
Egypt	6	70	8	66	20	8	44	8	3.5	4	4
El Salvador	8	70	9	44	20	9	66	9	3.5	4	4
Equatorial Guinea	4	70	7	22	20	7	44	7	3.5	4	4
Eritrea	4	70	7	44	20	7	66	7	3.5	4	4
Estonia	4	70	4	70	20	4	66	4	3.5	4	4
Ethiopia	4	70	8	66	20	8	66	8	3.5	4	4
Falkland Islands	0	0	0	0	0	0	0	9	3.5	4	4
Faroe Islands	5	70	5	70	20	5	44	5	3.5	4	4
Fiji	8	70	6	44	20	6	66	6	3.5	4	4
Finland	5	70	5	70	20	5	66	5	3.5	4	4
France	3	70	5	66	20	5	66	5	3.5	4	4
French Guiana	8	70	9	66	20	9	66	9	3.5	4	4
French Polynesia	4	70	6	66	20	6	66	6	3.5	4	4
Gabon	4	70	7	44	20	7	66	7	3.5	4	4
Gambia	4	70	7	66	20	0	0	7	3.5	4	4
Georgia, Republic of	4	70	4	44	20	4	66	4	3.5	4	4
Germany	3	70	5	70	20	5	66	5	3.5	4	4
Ghana	4	70	7	66	20	7	66	7	3.5	4	4
Gibraltar	4	70	5	44	20	0	0	5	3.5	4	4
Great Britain and Northern Ireland	3	70	5	66	20	5	66	5	3.5	4	4
Greece	5	70	5	44	20	5	66	5	3.5	4	4
Greenland	5	70	5	66	20	0	0	5	3.5	4	4
Grenada	7	70	9	44	20	9	66	9	3.5	4	4
Guadeloupe	7	70	9	66	20	9	66	9	3.5	4	4
Guatemala	8	70	9	44	20	9	66	9	3.5	4	4
Guinea	4	70	7	66	20	7	44	7	3.5	4	4
Guinea-Bissau	0	0	7	66	20	7	44	7	3.5	4	4
Guyana	8	70	9	44	20	9	66	9	3.5	4	4
Haiti	7	70	9	55	20	9	66	9	3.5	4	4
Honduras	8	70	9	44	20	9	44	9	3.5	4	4
Hong Kong	3	70	3	66	20	3	66	3	3.5	4	4
Hungary	4	70	4	44	20	4	66	4	3.5	4	4
Iceland	5	70	5	70	20	5	66	5	3.5	4	4
India	6	70	6	44	20	6	70	6	3.5	4	4
Indonesia	6	70	6	44	20	6	66	6	3.5	4	4
Iran	0	0	8	44	0	0	0	8	3.5	4	4
Iraq	6	70	8	44	20	8	44	8	3.5	4	4
Ireland	3	70	5	66	20	5	66	5	3.5	4	4
Israel	6	70	8	44	20	8	44	8	3.5	4	4
Italy	3	70	5	66	20	5	66	5	3.5	4	4
Jamaica	7	70	9	22	20	9	66	9	3.5	4	4
Japan	3	70	3	66	20	3	66	3	3.5	4	4
Jordan	6	70	8	66	20	8	66	8	3.5	4	4

COUNTRY RATE GROUPS AND WEIGHT LIMITS—Continued

Country	[1] GXG rate group [5]	[1] GXG max wt. lbs.	[2] PMI rate group [5]	[2] PMI max wt. lbs.	[2] PMI flat-rate box max wt. lbs.	[3] EMI rate group [5]	[3] EMI max wt. lbs.	[4] FCMI rate group [5]	[4] FCMI letters max wt. oz.	[4] FCMI letters max wt. lbs.	[4] FCMI letters max wt. lbs.
Kazakhstan	4	70	6	44	20	6	66	6	3.5	4	4
Kenya	4	70	7	70	20	7	70	7	3.5	4	4
Kiribati	0	0	6	44	20	0	0	6	3.5	4	4
Korea, Democratic Peoples Republic of (North Korea)	0	0	0	0	0	0	0	6	3.5	4	4
Korea, Republic of (South Korea)	6	70	3	44	20	3	66	3	3.5	4	4
Kuwait	6	70	8	66	20	8	66	8	3.5	4	4
Kyrgyzstan	4	70	6	44	20	6	66	6	3.5	4	4
Laos	8	70	6	44	20	6	66	6	3.5	4	4
Latvia	4	70	4	70	20	4	66	4	3.5	4	4
Lebanon	6	70	8	66	20	0	0	8	3.5	4	4
Lesotho	4	70	7	44	20	7	66	7	3.5	4	4
Liberia	4	70	7	44	20	7	44	7	3.5	4	4
Libya	0	0	8	44	20	0	0	8	3.5	4	4
Liechtenstein	5	70	5	66	20	5	66	5	3.5	4	4
Lithuania	4	70	4	70	20	4	70	4	3.5	4	4
Luxembourg	3	70	5	66	20	5	66	5	3.5	4	4
Macao	3	70	6	70	20	6	70	6	3.5	4	4
Macedonia, Republic of	4	70	4	70	20	4	66	4	3.5	4	4
Madagascar	4	70	7	44	20	7	66	7	3.5	4	4
Malawi	4	70	7	66	20	7	44	7	3.5	4	4
Malaysia	6	70	6	66	20	6	66	6	3.5	4	4
Maldives	6	70	6	66	20	6	66	6	3.5	4	4
Mali	4	70	7	66	20	7	66	7	3.5	4	4
Malta	5	70	5	66	20	5	44	5	3.5	4	4
Martinique	7	70	9	66	20	9	66	9	3.5	4	4
Mauritania	4	70	7	44	20	7	66	7	3.5	4	4
Mauritius	4	70	7	44	20	7	66	7	3.5	4	4
Mexico	2	70	2	44	20	2	44	2	3.5	4	4
Moldova	4	70	4	70	20	4	70	4	3.5	4	4
Mongolia	4	70	6	66	20	6	66	6	3.5	4	4
Montserrat	7	70	9	44	20	0	0	9	3.5	4	4
Morocco	4	70	8	66	20	8	68	8	3.5	4	4
Mozambique	4	70	7	66	20	7	66	7	3.5	4	4
Namibia	4	70	7	44	20	7	22	7	3.5	4	4
Nauru	0	0	6	44	20	6	44	6	3.5	4	4
Nepal	6	70	6	44	20	6	69	6	3.5	4	4
Netherlands	3	70	5	44	20	5	66	5	3.5	4	4
Netherlands Antilles	7	70	9	44	20	9	66	9	3.5	4	4
New Caledonia	8	70	6	66	20	6	66	6	3.5	4	4
New Zealand	6	70	6	66	20	6	66	6	3.5	4	4
Nicaragua	8	70	9	66	20	9	55	9	3.5	4	4
Niger	4	70	7	70	20	7	70	7	3.5	4	4
Nigeria	4	70	7	66	20	7	66	7	3.5	4	4
Norway	5	70	5	66	20	5	66	5	3.5	4	4
Oman	6	70	8	44	20	8	66	8	3.5	4	4
Pakistan	6	70	6	70	20	6	66	6	3.5	4	4
Panama	8	70	9	70	20	9	66	9	3.5	4	4
Papua New Guinea	8	70	6	44	20	6	55	6	3.5	4	4
Paraguay	8	70	9	66	20	9	55	9	3.5	4	4
Peru	8	70	9	70	20	9	70	9	3.5	4	4
Philippines	6	70	6	44	20	6	44	6	3.5	4	4
Pitcairn Island	0	0	6	22	20	0	0	6	3.5	4	4
Poland	4	70	4	44	20	4	44	4	3.5	4	4
Portugal	5	70	5	66	20	5	66	5	3.5	4	4
Qatar	6	70	8	70	20	8	66	8	3.5	4	4
Reunion	4	70	9	66	20	0	0	9	3.5	4	4
Romania	4	70	4	70	20	4	70	4	3.5	4	4
Russia	4	70	4	44	20	4	66	4	3.5	4	4
Rwanda	4	70	7	66	20	7	66	7	3.5	4	4
Saint Christopher and Nevis	7	70	9	44	20	9	66	9	3.5	4	4
Saint Helena	0	0	7	44	20	0	0	7	3.5	4	4
Saint Lucia	7	70	9	44	20	9	44	9	3.5	4	4
Saint Pierre and Miquelon	0	0	4	66	20	0	0	4	3.5	4	4
Saint Vincent and the Grenadines	7	70	9	22	20	9	44	9	3.5	4	4
San Marino	3	70	5	66	20	5	66	5	3.5	4	4
Sao Tome and Principe	0	0	7	44	20	0	0	7	3.5	4	4
Saudi Arabia	4	70	8	66	20	8	66	8	3.5	4	4
Senegal	4	70	7	66	20	7	66	7	3.5	4	4
Serbia-Montenegro	4	0	5	70	20	5	66	5	3.5	4	4
Seychelles	4	70	7	70	20	7	66	7	3.5	4	4
Sierra Leone	0	0	7	66	20	7	66	7	3.5	4	4
Singapore	3	70	6	66	20	6	66	6	3.5	4	4
Slovak Republic	4	70	5	66	20	5	66	5	3.5	4	4
Slovenia	4	70	5	66	20	5	66	5	3.5	4	4
Solomon Islands	0	0	6	44	20	6	66	6	3.5	4	4
Somalia	0	0	0	0	0	0	0	0	0	0	0
South Africa	4	70	7	66	20	7	66	7	3.5	4	4
Spain	5	70	5	44	20	5	66	5	3.5	4	4

COUNTRY RATE GROUPS AND WEIGHT LIMITS—Continued

Country	[1] GXG rate group [5]	[1] GXG max wt. lbs.	[2] PMI rate group [5]	[2] PMI max wt. lbs.	[2] PMI flat-rate box max wt. lbs.	[3] EMI rate group [5]	[3] EMI max wt. lbs.	[4] FCMI rate group [5]	[4] FCMI letters max wt. oz.	[4] FCMI letters max wt. lbs.	[4] FCMI letters max wt. lbs.
Sri Lanka	6	70	6	66	20	6	66	6	3.5	4	4
Sudan	0	0	7	44	20	7	66	7	3.5	4	4
Suriname	8	70	9	44	20	0	0	9	3.5	4	4
Swaziland	4	70	7	44	20	7	66	7	3.5	4	4
Sweden	5	70	5	66	20	5	66	5	3.5	4	4
Switzerland	5	70	5	66	20	5	66	5	3.5	4	4
Syrian Arab Republic	6	70	8	70	20	8	44	8	3.5	4	4
Taiwan	3	70	6	44	20	6	33	6	3.5	4	4
Tajikistan	0	0	6	66	20	6	66	6	3.5	4	4
Tanzania	4	70	7	66	20	7	66	7	3.5	4	4
Thailand	6	70	6	66	20	6	66	6	3.5	4	4
Togo	4	70	7	70	20	7	66	7	3.5	4	4
Tonga	0	0	6	44	20	0	0	6	3.5	4	4
Trinidad and Tobago	7	70	9	44	20	9	66	9	3.5	4	4
Tristan da Cunha	0	0	7	22	20	0	0	7	3.5	4	4
Tunisia	4	70	8	66	20	8	66	8	3.5	4	4
Turkey	6	70	4	66	20	4	66	4	3.5	4	4
Turkmenistan	4	70	6	44	20	6	66	6	3.5	4	4
Turks and Caicos Islands	7	70	9	44	20	9	66	9	3.5	4	4
Tuvalu	0	0	6	55	20	0	0	6	3.5	4	4
Uganda	4	70	7	66	20	7	66	7	3.5	4	4
Ukraine	4	70	4	66	20	4	44	4	3.5	4	4
United Arab Emirates	6	70	8	70	20	8	70	8	3.5	4	4
Uruguay	8	70	9	66	20	9	44	9	3.5	4	4
Uzbekistan	4	70	6	70	20	6	66	6	3.5	4	4
Vanuatu	8	70	6	44	20	6	55	6	3.5	4	4
Vatican City	3	70	5	44	20	5	66	5	3.5	4	4
Venezuela	8	70	9	66	20	9	66	9	3.5	4	4
Vietnam	6	70	6	70	20	6	66	6	3.5	4	4
Wallis and Futuna Islands	4	70	6	66	20	0	0	6	3.5	4	4
Western Samoa	0	0	6	44	20	6	44	6	3.5	4	4
Yemen	6	70	8	66	20	8	66	8	3.5	4	4
Zambia	4	70	7	66	20	7	66	7	3.5	4	4
Zimbabwe	4	70	7	44	20	7	44	7	3.5	4	4

[1] GXG = Global Express Guaranteed.
[2] PMI = Priority Mail International.
[3] EMI = Express Mail International.
[4] FCMI = First-Class Mail International.
[5] Zero (0) = Service is not available.

Individual Country Listings

[For every country that First-Class Mail International is available, revise the First-Class Mail International section as follows:]

Country Conditions for Mailing

* * * * *

First-Class Mail International

[Replace current price table with new price tables for letters, large envelopes (flats) and packages (small packets) based on country's First-Class Mail International rate group.]

* * * * *

Neva R. Watson,

Attorney, Legislative.

[FR Doc. E8–2920 Filed 2–19–08; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

39 CFR Part 111

Periodicals—Limited Circulation Rate

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: This final rule revises the *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) to provide the eligibility standards for the Outside-County Limited Circulation rate that has been approved by the Governors of the United States Postal Service. Eligible issues of publications entitled to use this rate will receive a 5% discount on qualifying Outside-County copies. As set forth in the new standards, publications in each of the qualification categories may be eligible for the rate; issues of these publications will qualify if eligible copies are mailed at In-County rates and the total number of Outside-County copies mailed for that issue is less than 5,000.

DATES: *Effective Date:* May 12, 2008.

FOR FURTHER INFORMATION CONTACT: Jerry Lease, 202–268–7264, or Sue Thomas, 202–268–7268, United States Postal Service.

SUPPLEMENTARY INFORMATION: Section 1003 of the Postal Accountability and Enhancement Act, Public Law No. 109–435, 120 Stat. 3198, requires the Postal Service to establish, in accordance with the procedures in 39 U.S.C. 3622, a reduced rate of postage for certain copies of publications with at least one copy mailed at In-County rates, and less than 5,000 copies mailed to addresses outside of the county in which copies are eligible to be mailed at In-County rates. Publications in each qualification category may be eligible for the discount. Although the literal language of the statute does not appear to cover Requester publications, other parts of the statute allow Requester publications to qualify for Nonprofit, Classroom, and other preferred Periodicals rates and it appears consistent with the spirit of the law to allow them to qualify for the Limited Circulation rate as well. In order to do so, the new standards provide that circulation limits apply to paid and requester circulation, depending upon the qualification category of the publication.

The discount does not apply to commingled nonsubscriber or nonrequester copies in excess of the 10% allowance in DMM 707.7,

Nonprofit Periodicals, Classroom Periodicals, and Limited Circulation Science-of-Agriculture Periodicals publications. Limited Circulation Science-of-Agriculture publications receive a similar reduced rate of postage when also meeting the requirements of DMM 707.11.2.2.

The eligibility test established by the statute considers the outside county circulation of the issue. Accordingly, whether individual copies of a publication within one of the eligible qualification categories can utilize the discount must be determined on an issue-by-issue basis.

The Postal Service adopts the following changes to the *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), which is incorporated by reference in the Code of Federal Regulations. See 39 CFR Part 111.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

■ Accordingly, 39 CFR part 111 is amended as follows:

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows;

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise the following sections of the *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), as follows:

* * * * *

700 Special Standards

* * * * *

707 Periodicals

* * * * *

707.0 Rates and Fees

1.0 Rates and Fees

1.1 Outside-County—Including Science-of-Agriculture

[Revise 1.1.1 to incorporate the 5% discount for Limited Circulation rates and Limited Circulation Science-of-Agriculture rates as follow:]

1.1.1 Pound Rates

Per pound or fraction:

Preferred Rate Discounts: Authorized Nonprofit and Classroom mailers, and publications that meet the standards for Limited Circulation publications and Limited Circulation Science-of-Agriculture publications receive a discount of 5% off the total Outside-County postage excluding the postage for advertising pounds. The 5% discount does not apply to commingled nonsubscriber or nonrequester copies in excess of the 10% allowance in DMM 707.7.

* * * * *

[Add new 1.1.8, and 1.1.9 as follows:]

1.1.8 Limited Circulation Publications

Publications, excluding Nonprofit, Classroom, and Limited Circulation Science-of-Agriculture publications receive a 5% discount off the total Outside-County postage, excluding the postage for advertising pounds, if eligible copies are mailed at In-County rates and the total number of Outside-County copies mailed for that issue is less than 5,000. Nonsubscriber or nonrequester copies claiming the Limited Circulation discount are subject to the standards in 7.0.

1.1.9 Limited Circulation Science-of-Agriculture Publications

Publications meeting the requirements of 11.2.2 receive a 5% discount off the total Outside-County postage, excluding the postage for advertising pounds, if eligible copies are mailed at In-County rates and the total number of Outside-County copies mailed for that issue is less than 5,000. Nonsubscriber copies claiming the Limited Circulation discount are subject to the standards in 7.0.

7.0 Mailing to Nonsubscribers or Nonrequesters

* * * * *

[Revise 7.9.3 to incorporate provisions limiting the number of nonsubscriber or nonrequester copies that may be mailed at the new Limited Circulation and Limited Circulation Science-of-Agriculture rates as follows:]

7.9.3 Preferred Rates

For In-County rates, Nonprofit, Classroom, Science-of-Agriculture, Limited Circulation, and Limited Circulation Science-of-Agriculture publications, nonsubscriber (for Periodicals except requester publications) or nonrequester (for requester publications) copies up to 10% of the total number of copies mailed to subscribers or requesters during the calendar year may be mailed at the applicable Preferred rates or Preferred rate discount, provided that the nonsubscriber or nonrequester copies would qualify as Preferred rate or Preferred rate discount publications if mailed to subscribers or requesters and if the copies are presorted under applicable standards. Nonsubscriber or nonrequester copies mailed over the 10% limit are not eligible for Preferred rates or the Preferred rate discount. To qualify for regular Outside-County rates, the nonsubscriber or nonrequester copies over the 10% limit must be part of a presorted, commingled mailing (one that includes subscriber or requester copies). Subject to 11.3, nonsubscriber or nonrequester copies may be mailed at In-County rates up to a 10% limit of the total number of subscriber or requester copies of the publication mailed at In-County rates during the calendar year. Once the 10% calendar year limit is exceeded for the number of nonsubscriber or nonrequester copies that may be mailed at Preferred rates or the Preferred rate discount, the nonsubscriber or nonrequester copies may not then be mailed at In-County rates even if the 10% limit separately applied to those rates is not exceeded.

* * * * *

11.0 Basic Rate Eligibility

* * * * *

11.1 Outside-County Rates

* * * * *

[Add new 11.1.4 as follows:]

11.1.4 Limited Circulation Discount

Publications, excluding Nonprofit, Classroom, and Limited Circulation Science-of-Agriculture publications, receive a 5% discount off the total Outside-County postage, excluding the postage for advertising pounds, if eligible copies are mailed at In-County rates and the total number of Outside-County copies mailed for that issue is less than 5,000. Nonsubscriber or nonrequester copies claiming the Limited Circulation discount are subject to the standards in 7.0.

11.2 Outside-County Science-of-Agriculture Rates

* * * * *

[Revise the first sentence in 11.2.2 to include the words ''or requesters'' as follows:]

11.2.2 General

Science-of-Agriculture rates apply to Outside-County copies of authorized Periodicals publications mailed by publishers or news agents when the total copies provided during any 12-month period to subscribers or requesters residing in rural areas are at least 70% of the total number of copies distributed by any means for any purpose.

[Revise heading and text of 11.2.3 as follows:]

11.2.3 Limited Circulation Science-of-Agriculture Discount

Publications meeting the requirements of 11.2.2, receive a 5% discount off the total Outside-County postage, excluding the postage for advertising pounds, if eligible copies are mailed at In-County rates and the total number of Outside-County copies mailed for that issue is less than 5,000. Nonsubscriber or nonrequester copies claiming the Limited Circulation Science-of-Agriculture discount are subject to the standards in 7.0.

* * * * *

Neva R. Watson,

Attorney, Legislative.

[FR Doc. E8–2921 Filed 2–19–08; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

39 CFR Part 111

Premium Forwarding Service

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: This final rule revises *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) to make Premium Forwarding Service (PFS) a permanent mail classification. There are no major changes in the permanent PFS classification compared with the experimental service offering.

DATES: *Effective Date:* March 2, 2008.

FOR FURTHER INFORMATION CONTACT: Laraine Hope at 202–268–2138 or Garry Rodriguez at 202–268–7281.

SUPPLEMENTARY INFORMATION: The Postal Service published a final rule in the **Federal Register** on June 10, 2005 (70 FR 33836), introducing a new service called Premium Forwarding Service (PFS). PFS is a personalized service for reshipping mail from a customer's primary mailing address to a temporary address on a weekly basis using Priority Mail®. With PFS, the Postal Service reships mail to customers who are away for at least two weeks and up to one year.

The Postal Service filed a Request for a Recommended Decision with the Postal Regulatory Commission on July 31, 2007, to make the experimental classification permanent. On January 7, 2008, the Postal Regulatory Commission issued its Recommended Decision that PFS become a permanent service offering (Docket No. MC2007–3). The Governors accepted that recommendation and the Board of Governors (BOG) of the Postal Service, in Resolution 08–1 (January 24, 2008), directed implementation of PFS as a permanent mail classification on March 2, 2008.

PFS will be a permanent classification effective March 2, 2008. There are no major changes in the permanent PFS classification compared with the experimental service offering.

There were two minor changes made to the DMM language. The name of the fee charged to customers when they apply to use PFS is now referred to as an ''application fee'' for consistency. Also, the references to oversized parcels in renumbered sections 3.3.7 (formerly 709.4.3.7) and 3.4.1 (formerly 709.4.4.1) were removed due to redundancy. Although the references to oversized parcels have been removed from the aforementioned sections, any oversized parcel not requiring a scan or signature or arriving postage due at the primary address is still charged the appropriate oversized Parcel Post® rate.

The Postal Service adopts the following changes to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), which is incorporated by reference in the *Code of Federal Regulations.* See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Administrative practice and procedures, Postal Service.

Accordingly, 39 CFR part 111 is amended as follows:

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise the following sections of *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), as follows:

* * * * *

500 Additional Mailing Services

* * * * *

507 Mailer Services

* * * * *

[Renumber 3.0 through 12.0 as 4.0 through 13.0. Add new 3.0, Premium Forwarding Service, as follows:]

3.0 Premium Forwarding Service

3.1 Rates and Fees

3.1.1 Application Fee

Customers must pay a $10.00 nonrefundable application fee.

3.1.2 Weekly Reshipment Charge

The reshipment charge for each Priority Mail shipment to one temporary address is $11.95 for each week of service requested. The amount due for the total weeks requested must be paid in full at the time the application is received.

3.1.3 Extension of Service

A Premium Forwarding Service (PFS) customer may contact the post office responsible for delivery to the primary address prior to the last shipment date and extend PFS service (up to 1 year maximum service from the initial start date) as needed. An extension is processed only after the post office receives payment of the reshipment charges due for the total weeks of extension requested.

3.1.4 Early Termination of Service

A customer who terminates PFS early (e.g., a customer prepays for 10 weeks but returns to a primary address after 8 weeks, either temporarily or permanently) may request a refund for any unused weekly shipment charges from the post office serving the primary address. The application fee is nonrefundable.

3.2 Basic Standards

3.2.1 Description

Premium Forwarding Service (PFS) provides residential delivery customers and certain post office box customers an option to have all mail addressed to their primary address reshipped or rerouted to a temporary address, mainly by means of a weekly Priority Mail shipment. PFS is available for a period of not less than 2 weeks and not more than 1 year. This optional service is separate from the piece-by-piece forwarding service offered in 2.0, whereby only certain mailpieces are forwarded.

3.2.2 Use

Participation in PFS is subject to the following standards:

a. PFS is available to residential delivery customers and to post office box customers with a size-one or size-two post office box.

b. A customer must submit a completed PFS application, Form 8176, *Premium Forwarding Service (PFS) Application*, as specified by the Postal Service. The application fee and weekly reshipment charges for the full duration of the requested service must accompany the application.

c. Except as provided in 3.2.2d, customers must designate on the application whether the order is for an ''Individual'' or an ''Entire Household.''

d. For customers whose primary address is a post office box, only the box customer is authorized to initiate the

application and ''Entire Household'' must be designated on the application.

e. PFS is available for a period of not less than 2 weeks and not more than 1 year.

f. PFS is available only from and to domestic addresses.

g. PFS is available to, but not from, single-point central delivery addresses such as RV parks, hospitals, hotels, and U.S. Department of State addresses. See 703.3.0 for additional U.S. Department of State requirements.

3.2.3 Prohibited Use

PFS cannot be combined with any ancillary or extra services beyond those purchased by the original sender. In addition, PFS is not available for:

a. Customers who have an active temporary or permanent change-of-address (COA).

b. Customers who have an active Hold Mail Authorization (PS Form 8076). Mail that has previously been held at the primary address post office cannot be included in PFS reshipments to a customer's temporary address.

c. Customers whose primary address is a size-three, size-four, or size-five post office box. Residential customers who use these post office box sizes due to the unavailability of smaller boxes may request a waiver of this restriction.

d. Customers whose primary address is a business delivery address.

e. Customers whose primary address is a central point to which the USPS provides delivery in bulk to a third party, such as a commercial mail receiving agency (CMRA), RV park, trailer park, or hotel.

f. Customers whose primary address or temporary address is an APO or FPO.

g. Customers whose temporary address is within the 969 3-digit ZIP Code area or is otherwise in a U.S. territory or possession that requires a customs declaration.

3.3 Preparation

3.3.1 Weekly Priority Mail Reshipments

Regardless of any mailer's ancillary service endorsement on a mailpiece, all mail is reshipped in the weekly Priority Mail shipment, except as specified in 3.3.2 through 3.4.1.

3.3.2 Mailpieces Arriving at the Primary Address Endorsed ''Surface Mail Only'' or With Other Hazardous Materials Markings

Any mailpiece arriving at the primary address that indicates surface only transportation such as Label 127, ''Surface Mail Only'' or bears other hazardous materials markings such as ''Consumer Commodity ORM–D'', cannot be reshipped in the weekly Priority Mail shipment and must be rerouted separately via surface transportation.

3.3.3 Mailpieces Requiring a Scan or Signature at Delivery

Mailpieces requiring a scan or signature at delivery, such as Express Mail, Certified Mail, numbered insured mail or mailpieces with Delivery Confirmation, are appropriately scanned, then rerouted immediately and separately to the temporary address, subject to the following:

a. Express Mail, Priority Mail, and First-Class Mail are rerouted at no additional charge.

b. Standard Mail parcels are separately rerouted postage due at the appropriate 1-pound Parcel Post single-piece rate.

c. Package Services mailpieces (Parcel Post, Bound Printed Matter, Media Mail, and Library Mail) are separately rerouted postage due at the appropriate single-piece rate in the subclass in which the mailpiece was originally shipped. For Parcel Select items, the applicable rate is the Parcel Post rate.

3.3.4 Priority Mail Not Requiring a Scan or Signature at Delivery

Priority Mail that does not require a scan or signature at delivery is immediately and separately rerouted to the temporary address, unless it will fit into the weekly Priority Mail shipment and such inclusion does not delay its delivery to the temporary address.

3.3.5 Large First-Class Mail and Periodicals Parcels Not Requiring a Scan or Signature at Delivery

First-Class Mail and Periodicals parcels (firm bundles) not requiring a scan or signature at delivery and that do not fit into the weekly Priority Mail shipment are separately rerouted at no additional charge.

3.3.6 Standard Mail Parcels Not Requiring a Scan or Signature at Delivery

Eligible Standard Mail parcels that do not require a scan or signature at delivery are included in the weekly Priority Mail shipment provided they will fit. Parcels that do not fit or are otherwise ineligible (e.g., mailpieces identified as surface transportation only) are separately rerouted postage due at the appropriate 1-pound Parcel Post single-piece rate.

3.3.7 Package Services Mailpieces Not Requiring a Scan or Signature at Delivery

Package Services mailpieces not requiring a scan or signature at delivery are separately rerouted postage due at the appropriate single-piece rate in the subclass in which the mailpiece was originally shipped. For Parcel Select items, the applicable rate is the Parcel Post rate.

3.4 Enter and Deposit

3.4.1 Mailpieces Arriving Postage Due at the Primary Address

Any mailpiece arriving postage due at the Post Office serving a customer's primary address is not reshipped in the weekly Priority Mail shipment and will be rerouted individually. Mailpieces arriving postage due are rerouted as follows:

a. Postage due First-Class Mail mailpieces are rerouted as First-Class Mail postage due. Only the original postage due amount is collected. There is no additional charge for rerouting the mailpiece.

b. Postage due Priority Mail mailpieces are rerouted as Priority Mail postage due. Only the original postage due amount is collected. There is no additional charge for rerouting the mailpiece.

c. Postage due Package Services mailpieces are rerouted postage due at the appropriate single-piece rate in the subclass in which the mailpiece was originally shipped. For Parcel Select items, the applicable rate is the Parcel Post rate. The total postage due for Package Services mailpieces is the sum of the postage due at the time of receipt at the primary address plus the postage due for rerouting the mailpiece from the primary post office to the temporary address at the appropriate single-piece rate.

* * * * *

700 Special Standards

* * * * *

709 Experimental Classifications and Rates

[Delete 4.0, Premium Forwarding Service. Premium Forwarding Service becomes a permanent offering in 507.]

* * * * *

An appropriate amendment to 39 CFR part 111 to reflect these changes will be published.

Neva Watson,

Attorney, Legislative.

[FR Doc. E8–2919 Filed 2–19–08; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2007–0293; FRL–8529–8]

Approval and Promulgation of Air Quality Implementation Plans; Indiana; VOC Emissions From Fuel Grade Ethanol Production Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a March 30, 2007, request from the Indiana Department of Environmental Management (IDEM) to revise the Indiana State Implementation Plan (SIP) by adding a volatile organic compound (VOC) rule for fuel grade ethanol production at dry mills as amendments to 326 IAC 8–5. This rule revision creates an industry-specific Best Available Control Technology (BACT) standard for new fuel grade ethanol production dry mills that replaces the otherwise required case-by-case SIP BACT determination for new facilities with the potential to emit 25 tons or more of VOC per year. Indiana believes that this rule will increase the clarity, predictability and timeliness of its air permits for this particular group of sources. These rules were proposed for approval on September 13, 2007, and comments were received on October 8, 2007.

DATES: This final rule is effective on March 21, 2008.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2006–0293. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Steven Rosenthal, Environmental Engineer, at (312) 886–6052 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Steven Rosenthal, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6052, *rosenthal.steven@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. What Public Comments Were Received on the Proposed Approval and What Is EPA's Response?
II. What Action Is EPA Taking and What Is the Reason for This Action?
III. Statutory and Executive Order Reviews

I. What Public Comments Were Received on the Proposed Approval and What Is EPA's Response?

EPA received three comments on its September 13, 2007, proposal from The Natural Resource Group (NRG), as follows:

Comment 1. NRG is concerned that the amendments do not address technologies other than those specifically identified (i.e., thermal oxidizers, wet scrubbers, and flares). This rule should still allow a dry-mill ethanol plant to perform a case-by-case BACT determination if the facility believes that it has a technology that can achieve low VOC emissions without the additional capital costs and energy use required to control emissions with the technologies identified in the rule.

EPA response 1. Without this rule, new facilities not regulated by a provision in 326 IAC Article 8 that have potential emissions of 25 tons or more of VOC per year are required to reduce VOC emissions using BACT. Establishing BACT is a case-by-case determination based on the maximum reduction in emissions that is technically feasible, while taking into account energy, environmental, and economic impact. According to Indiana, establishing industry-specific BACT standards in place of case-by-case BACT will improve the clarity, predictability and timeliness of permit decisions involving sources that are currently subject to 326 IAC 8–1–6. NRG's approach would revert this rule to case-by-case BACT determinations for the subject ethanol plants and eliminate its primary purpose. In addition, if a new and superior technology is established for ethanol plants, Indiana has the option of amending this rule to allow such technology.

Comment 2. NRG stated that the basis for the VOC destruction and concentration is not identified in the rule, and that in order to make a VOC concentration legitimate, there must be a specific test method to determine the concentration. It is, therefore, very important that the rule state a basis for the concentration limit, because the levels identified in the rule are not attainable under some of the potential bases that could be required by IDEM.

EPA response 2. EPA agrees with NRG that a specific test method is needed to implement the 10 ppm and 20 ppm alternative control requirements for thermal oxidizers and wet scrubbers, respectively, in rule 326 IAC 8–5–6. After discussions with EPA, Region 5, in a December 19, 2007, letter from Daniel Murray, Assistant Commissioner for the Office of Air Quality, IDEM stated that it would be acceptable to measure the 10 ppm and 20 ppm concentration limits using EPA Method 25(A), expressed as equivalent ethanol, with the calibration gas being a mixture of ethanol in air.

Comment 3. NRG also noted that the rule currently excludes wet-mill ethanol plants that steep or soak the corn in order to separate the kernel, presumably because the emission characteristics for such facilities are different from dry-mill ethanol plants and require case-by-case determinations. According to NRG, however, technologies are currently in development that may allow dry-mill ethanol plants to separate the kernel without using a wet process. This technology has the potential to reduce the VOC emissions from the spent grain dryers due to the potential reduction in spent grain throughput. The emissions from dry-mill ethanol plants with dry kernel separation technology may be comparable to that of wet-mill ethanol plant dryers with one key difference; dry-mill plants will only dry the spent grain while the other parts of the kernel that are removed prior to fermentation can be further processed or shipped without drying. For this reason, NRG believes that this rule should also exclude dry-mill ethanol plants that use dry separation technologies.

EPA response 3. The definition in 326 IAC 8–5–6(b)(1) of ''Dry mill'' is ''an ethanol production operation that uses the whole corn kernel to produce a meal that is then used to produce alcohol * * *.'' Because 326 IAC 8–5 does not cover dry-mill ethanol plants with dry kernel separation technology, NRG's concerns have been addressed.

II. What Action Is EPA Taking and What Is the Reason for This Action?

We are approving revisions to the Indiana SIP in two areas: (1) To amend 326 IAC 8–5–1, Applicability of Rule; and (2) to add 326 IAC 8–5–6, Fuel

Grade Ethanol Facilities. It should be noted that approval of this rule does not in any way affect the applicability of Nonattainment New Source Review or Prevention of Significant Deterioration to subject sources.

III. Statutory and Executive Order Reviews

Executive Order 12866: Regulatory Planning and Review

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

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

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

Regulatory Flexibility Act

This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

Unfunded Mandates Reform Act

Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 13132: Federalism

This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

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

This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

National Technology Transfer Advancement Act

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

Paperwork Reduction Act

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

Congressional Review Act

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

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 21, 2008. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* Section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: February 5, 2008.

Bharat Mathur,

Acting Regional Administrator, Region 5.

■ For the reasons stated in the preamble, part 52, chapter I, of title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart P—Indiana

■ 2. Section 52.770 is amended by adding paragraph (c)(182) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(182) On March 30, 2007, Indiana submitted final adopted revisions, which amend 326 IAC 8–5–1, concerning rule applicability, and add 326 IAC 8–5–6, fuel grade ethanol production at dry mills, to its VOC rules as a requested revision to the Indiana state implementation plan. By letter of December 19, 2007, Indiana stated that it would be acceptable to measure the concentration limits in 326 IAC 8–5–6 using EPA Method 25(a) expressed as equivalent ethanol with the calibration gas being a mixture of ethanol in air. EPA is approving these revisions, authorizing Indiana to establish an

industry-specific State BACT standard for fuel grade ethanol production at dry mill facilities that emit 25 tons or more of VOC per year.

(i) *Incorporation by reference.* The following sections of the Indiana Administrative Code (IAC) are incorporated by reference. 326 IAC 8–5–1, ''Applicability of Rule'', and 326 IAC 8–5–6 ''Fuel Grade Ethanol Production at Dry Mills''. Approved by the Attorney General February 16, 2007. Approved by the Governor February 16, 2007. Filed with the Publisher February 20, 2007. Published on the Indiana Register Web site March 21, 2007, Document Identification Number (DIN):20070321-IR–326050197FRA. Effective March 22, 2007.

(ii) *Additional materials.* A December 19, 2007, letter from Daniel Murray, Assistant Commissioner of the Indiana Department of Environmental management, Office of Air Quality, which states that it would be acceptable to measure the concentration limits in 326 IAC 8–5–6 using EPA Method 25(a) expressed as equivalent ethanol with the calibration gas being a mixture of ethanol in air.

* * * * *

[FR Doc. E8–2893 Filed 2–19–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2007–0633; A–1–FRL–8517–6]

Approval and Promulgation of Air Quality Implementation Plans; Maine; Conformity of General Federal Actions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Maine for the purpose of making the SIP consistent with recent additions to the Federal general conformity regulation. This revision incorporates by reference new definitions and establishes *de minimis* emission levels for fine particular matter ($PM_{2.5}$) into Maine's existing general conformity criteria and procedures previously approved into the Maine SIP. This action is being taken in accordance with the Clean Air Act.

DATES: This direct final rule will be effective April 21, 2008, unless EPA receives adverse comments by March 21, 2008. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R01–OAR–2007–0633 by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: arnold.anne@epa.gov.*
3. *Fax:* (617) 918–0047.
4. *Mail:* ''Docket Identification Number EPA–R01–OAR–2007–0633'', Anne Arnold, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (mail code CAQ), Boston, MA 02114–2023.
5. *Hand Delivery or Courier.* Deliver your comments to: Anne Arnold, Manager, Air Quality Planning Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, (CAQ), Boston, MA 02114–2023. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R01–OAR–2007–0633. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov,* or e-mail, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

In addition, copies of the State submittal are also available for public inspection during normal business hours, by appointment at the State Air Agency; the Bureau of Air Quality Control, Department of Environmental Protection, First Floor of the Tyson Building, Augusta Mental Health Institute Complex, Augusta, ME 04333–0017.

FOR FURTHER INFORMATION CONTACT: Donald O. Cooke, Air Quality Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (CAQ), Boston, MA 02114–2023, telephone number (617) 918–1668, fax number (617) 918–0668, e-mail *cooke.donald@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

Organization of this document. The following outline is provided to aid in locating information in this preamble.

I. Background and Purpose
II. State Submittal
III. Final Action
IV. Statutory and Executive Order Reviews

I. Background and Purpose

Section 176(c) of the Clean Air Act, as amended (the Act), prohibits Federal entities from taking actions in nonattainment or maintenance areas which do not conform to the State

implementation plan (SIP) for the attainment and maintenance of the national ambient air quality standards (NAAQS). Therefore, the purpose of conformity is to: (1) Ensure Federal activities do not interfere with the emission budgets in the SIPs; (2) ensure actions do not cause or contribute to new violations; and (3) ensure attainment and maintenance of the NAAQS. Section 176(c) of the Act also requires the EPA to promulgate criteria and procedures for demonstrating and ensuring conformity of Federal actions to an applicable implementation plan developed pursuant to Section 110 and Part D of the Act. EPA promulgated a final rulemaking on November 30, 1993 consisting of 40 CFR part 93, subpart B ''Determining Conformity of General Federal Actions to State or Federal Implementation Plans,'' which applied to Federal agencies immediately (hereafter referred to as the General Conformity rule); and 40 CFR part 51, subpart W ''Determining conformity of general Federal Actions to State or Federal Implementation Plans'' which established requirements for States in submitting SIPs. The general conformity rules, except for the 40 CFR 51.851(a) language requiring State submission of a SIP revision, are repeated at 40 CFR part 93, subpart B. The General Conformity rule establishes the criteria and procedures governing the determination of conformity for all Federal actions, except Federal highway and transit actions. [1]

The General Conformity rule also establishes the criteria for EPA approval of SIPs. See 40 CFR 51.851 and 93.151. These criteria provide that the state provisions must be at least as stringent as the requirements specified in EPA's General Conformity rule, and that they can be more stringent only if they apply equally to Federal and non-Federal entities (§§ 51.851(b)).

On October 11, 1996, the State of Maine submitted a formal revision to its State Implementation Plan (SIP). The SIP revision consisted of incorporating by reference 40 CFR 51.850 through 51.860 (with the exception of § 51.851) thereby establishing general conformity criteria and procedures in the Maine SIP no more stringent than the Federal rule and not imposing any additional controls on non-Federal entities. EPA approved Maine's General Conformity SIP through a direct final rule published in the **Federal Register** on September 23, 1997, (62 FR 49608–49611) and effective November 24, 1997.

EPA amended the General Conformity rule on July 17, 2006, (71 FR 40420–40427). In the amended rule, EPA revised the tables in subparagraphs (b)(1) and (b)(2) of 40 CFR 51.853 and 40 CFR 93.153 by adding the *de minimis* emission levels for $PM_{2.5}$. The EPA also established 100 tons per year as the *de minimis* emission level for direct $PM_{2.5}$ and each of its precursors as defined in revised §§ 51.852 and 93.152. The $PM_{2.5}$ precursors for the purposes of general conformity applicability are: volatile organic compounds (VOC's) and ammonia (NH_3) emissions, which are only considered $PM_{2.5}$ precursors in nonattainment areas where either a State or EPA has made a finding that they significantly contribute to the $PM_{2.5}$ problem in a given area or to other downwind air quality concerns; NO_X emissions, which are considered a $PM_{2.5}$ precursor unless the State and EPA make a finding that NO_X emissions from sources in the State do not significantly contribute to the $PM_{2.5}$ problem in a given area or to other downwind air quality concerns; and SO_2 emissions, which are always considered a $PM_{2.5}$ precursor. Since EPA did not designate any classifications for the $PM_{2.5}$ nonattainment areas under the 1997 National Ambient Air Quality Standards for $PM_{2.5}$, EPA did not establish $PM_{2.5}$ *de minimis* emission levels for higher classified nonattainment areas.

II. State Submittal

On June 29, 2007, the State of Maine submitted a formal revision to its State Implementation Plan (SIP). The SIP revision consists of incorporating by reference 40 CFR 51.852 (Definitions), and 51.853 (Applicability), of 40 CFR part 51, subpart W, ''Determining Conformity of General Federal Actions to State or Federal Implementation Plans,'' as amended on July 17, 2006 in the **Federal Register** (71 FR 40420–40426). By incorporating by reference the amended General Conformity rule, Maine's Chapter 141 ''Conformity of General Federal Actions,'' is no more stringent than the Federal rule and does not impose any additional controls on non-Federal entities.

Maine's SIP revision was the subject of a public hearing held on March 1, 2007 in accordance with Federal and state administrative requirements. The Maine Board of Environmental Protection adopted the amendments to ''State Chapter 141—Conformity of General Federal Actions,'' on April 19, 2007. The Maine Office of the Attorney General certified Chapter 141 as to form and legality on May 7, 2007.

EPA determined that the submittal of the Department of Environmental Protection's Chapter 141 ''Conformity of General Federal Actions'' was administratively and technically complete in a July 26, 2007 completeness letter.

III. Final Action

EPA is approving Maine's revised Chapter 141 ''Conformity of General Federal Actions,'' and incorporating this regulation into the Maine SIP. Maine's rule is consistent with the latest Federal General Conformity rule as amended on July 17, 2006. The EPA has evaluated Maine's SIP revision and has determined that the State has fully adopted the provisions of the General Conformity rule set forth at 40 CFR part 51, subpart W. The appropriate public participation and comprehensive interagency consultations have been undertaken during development and adoption of this SIP revision.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective April 21, 2008 without further notice unless the Agency receives relevant adverse comments by March 21, 2008.

If the EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. All parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on April 21, 2008 and no further action will be taken on the proposed rule. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and

[1] Conformity to State or Federal Implementation Plans of transportation plans, programs, and projects which are developed, funded or approved under Title 23 U.S.C. or the Federal Transit Laws are implemented under 40 CFR part 51, subpart T and 40 CFR part 93, subpart A.

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 21, 2008. Interested parties should comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: January 9, 2008.

Robert W. Varney,

Regional Administrator, EPA New England.

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

PART 52—[AMENDED]

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

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

Subpart U—Maine

■ 2. Section 52.1020 is amended by reserving paragraphs (c)(60) and (c)(61) and by adding paragraph (c)(63) to read as follows:

§ 52.1020 Identification of plan.

* * * * *

(c) * * *

(60) [Reserved]

(61) [Reserved]

* * * * *

(63) Revision to Chapter 141 ''Conformity of General Federal Actions,'' submitted by the Maine Department of Environmental Protection on June 29, 2007 and effective in the State of Maine on May 21, 2007.

(i) Incorporation by reference.

(A) Chapter 141 ''Conformity of General Federal Actions'' 1. Definition. Effective in the State of Maine on May 21, 2007.

(ii) Additional Materials.

(A) Chapter 141 ''Conformity of General Federal Actions,'' 2. Conformity to State and Federal Implementation Plans. The Maine Department of Environmental Protection amended its incorporation-by-reference within Chapter 141.2 to reflect EPA's revision to the Federal General Conformity Rule for fine particulate matter promulgated on July 17, 2006 (71 FR 40420–40427); specifically 40 CFR 51.852 Definitions and 40 CFR 51.853 Applicability.

■ 3. In § 52.1031, Table 52.1031 is amended by adding new entries under the existing state citation Chapter 141: Conformity of General Federal Actions to read as follows:

§ 52.1031 EPA-approved Maine regulations.

* * * * *

TABLE 52.1031.—EPA-APPROVED RULES AND REGULATIONS

State citation	Title/subject	Date adopted by state	Date approved by EPA	**Federal Register** citation	52.1020	
*	*	*		*	*	*	*
141	Conformity of General Federal Actions.	4/19/07	2/20/08	[Insert **Federal Register** page number where the document begins].	(c)(63)	Amendment to incorporate new fine particulate matter provisions.
*	*	*		*	*	*	*

Note.—1. The regulations are effective statewide unless stated otherwise in comments section.

[FR Doc. E8–2884 Filed 2–19–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52

[EPA–R04–OAR–2007–0150–200711(a); FRL–8528–8]

Approval and Promulgation of Implementation Plans for Air Quality Planning Purposes; Georgia: Early Progress Plan for the Atlanta 8-Hour Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On December 31, 2006, the State of Georgia, through the Environmental Protection Division (EPD) of the Georgia Department of Natural Resources, submitted a voluntary State Implementation Plan (SIP) revision requesting approval of an Early Progress Plan for the sole purpose of establishing motor vehicle emission budgets (MVEBs) for the Atlanta 8-hour ozone nonattainment area. The Atlanta 8-hour ozone nonattainment area is comprised of the following twenty counties: Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Hall, Henry, Newton, Paulding, Rockdale, Spalding and Walton counties in their entireties (hereafter referred to as the ''Atlanta 8-Hour Ozone Area''). EPA is approving Atlanta's Early Progress Plan, including the new regional MVEBs for nitrogen oxides (NO_X) and volatile organic compounds (VOC) for 2006. This approval of the Early Progress Plan for the Atlanta 8-Hour Ozone Area is based on EPA's determination that Georgia has demonstrated that the SIP revision containing these MVEBs, when considered with the emissions from all sources, shows some progress toward attainment from the base year (i.e., 2002) through an interim target year (i.e., 2006).

DATES: This direct final rule is effective April 21, 2008 without further notice, unless EPA receives adverse comment by March 21, 2008. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2007–0150, by one of the following methods:

a. *www.regulations.gov*: Follow the on-line instructions for submitting comments.

b. *E-mail: Benjamin.Lynorae@epa.gov.*

c. *Fax:* (404) 562–9019.

d. *Mail:* EPA–R04–OAR–2007–0150, Air Quality Modeling and Transportation Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

e. *Hand Delivery or Courier:* Lynorae Benjamin, Air Quality Modeling and Transportation Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R04–OAR–2007–0150. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air Quality Modeling and Transportation Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you

contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Lynorae Benjamin of the Air Quality Modeling and Transportation Section at the Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Ms. Benjamin's telephone number is (404) 562–9040. She can also be reached via electronic mail at *Benjamin.Lynorae@epa.gov.*

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I. What Action Is EPA Taking?

EPA is approving Atlanta's Early Progress Plan, including the new regional MVEBs for NO_X and VOC for 2006. This approval of the Early Progress Plan for the Atlanta 8-Hour Ozone Area is based on EPA's determination that Georgia has demonstrated that the MVEBs are consistent with emissions from all sources in the nonattainment area (when projected from the base to a future year) and are included in a SIP revision showing some progress toward attainment. These regional MVEBs apply to the entire Atlanta 8-Hour Ozone Area.

This direct final rulemaking is in response to Georgia's January 12, 2007, SIP submittal, which supersedes Georgia's October 26, 2006, submittal that included a request for parallel processing.[1] This revision is a voluntary SIP revision provided by Georgia for the sole purpose of establishing MVEBs for the purpose of implementing transportation conformity in the Atlanta 8-Hour Ozone Area. This submission is not being evaluated in terms of meeting SIP requirements for an attainment demonstration or rate-of-progress plan which may be required for the Atlanta 8-Hour Ozone Area.

II. What Is the Background for EPA's Action?

Ground-level ozone is not emitted directly by sources. Rather, emissions of NO_X and VOC from sources react in the presence of sunlight to form ground-level ozone. NO_X and VOC are referred to as precursors of ozone. The Clean Air Act (CAA) establishes a process for air quality management through the setting of the national ambient air quality standards (NAAQS) to protect public health and welfare. Transportation conformity is a component of the air quality management process that must be implemented in areas that are designated nonattainment or were previously designated nonattainment and are required to develop a CAA section 175A maintenance plan for a NAAQS affected by emissions from motor vehicles. Ozone is one such NAAQS.

On April 30, 2004, EPA designated the 20-county Atlanta 8-Hour Ozone Area as a ''marginal'' 8-hour ozone nonattainment area (see, 69 FR 23857, April 30, 2004). Thirteen counties[2] in the Atlanta 8-Hour Ozone Area were previously designated nonattainment for the 1-hour ozone standard and have 1-hour MVEBs for NO_X and VOC established in the Georgia SIP. The remaining seven counties[3] of the 20-county Atlanta 8-Hour Ozone Area were designated attainment for the 1-hour ozone standard and as such did not have 1-hour MVEBs for NO_X and VOC. Consequently, the transportation partners in this Area used a combination of the budget test and the interim 2002 baseline test to demonstrate transportation conformity for the 8-hour ozone standard, as required by the transportation conformity rule at 40 CFR 93.109(e)(2)(iii). Specifically, for the 13-county 1-hour ozone area, the MVEBs in the Georgia SIP for the 1-hour ozone standard were used to demonstrate transportation conformity for the 8-hour ozone standard. For the remaining seven counties, the 2002 baseline test, as agreed to through interagency consultation, was used to demonstrate transportation conformity for the 8-hour ozone standard. Thirteen counties of the Atlanta 8-Hour Ozone Area were within a 1-hour ozone attainment area subject to a CAA section 175A maintenance plan for the 1-hour ozone standard.

On June 8, 2007, the U.S. Court of Appeals for the D.C. Circuit (D.C. Circuit) issued a decision vacating portions of EPA's Phase I 8-Hour Ozone Implementation Rule. This decision does not impact Georgia's request for approval of the voluntary Early Progress Plan. In its June 8th decision, the Court clarified that for areas with 1-hour MVEBs, the transportation conformity rule's requirement to use 1-hour MVEBs for 8-hour conformity determinations until they are replaced by 8-hour budgets fulfills the CAA's anti-backsliding requirements. Consistent with EPA's conformity regulations at 40 CFR Part 93 and prior to EPA's adequacy finding for the 8-hour ozone MVEBs in Atlanta's Early Progress Plan, the Atlanta Regional Commission and the Gainesville-Hall Metropolitan Planning Organization were meeting the requirement to use the 1-hour ozone MVEBs as an interim test for conformity determinations.

III. What Are the Regional MVEBs for the Atlanta 8-Hour Ozone Area?

Pursuant to the CAA, states are required to submit, at various times, control strategy SIPs and maintenance plans for ozone nonattainment areas. These control strategy SIPs (e.g., reasonable further progress SIPs and attainment demonstration SIPs) and maintenance plans create MVEBs for criteria pollutants and/or their precursors to address pollution from cars and trucks. Pursuant to 40 CFR part 93, an MVEB is required to be established for: (1) The attainment year for an attainment plan; (2) the last year of the maintenance plan; or (3) the target year for a reasonable further progress plan. Additionally, through an Early Progress Plan, a state may voluntarily establish MVEBs for an area so long as these MVEBs are consistent with a demonstration that shows some progress, between a base and future year, towards attainment. The MVEB is the portion of the total allowable emissions in a SIP that is allocated to highway and transit vehicle use and emissions. See, 40 CFR 93.101. The MVEB serves as a ceiling on emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, transportation

[1] Georgia's January 12, 2007, submittal was sent to EPA for approval with a December 31, 2006, cover letter but the SIP submittal is actually dated for January 12, 2007, and thus will be referred to throughout this rulemaking as Georgia's January 12, 2007, SIP submittal.

[2] The Atlanta 1-hour ozone area was comprised of the following thirteen counties: Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Paulding, and Rockdale counties in their entireties.

[3] The seven additional counties that are included in the 8-hour ozone nonattainment for Atlanta are: Barrow, Bartow, Carroll, Hall, Newton, Spalding and Walton counties in their entireties.

conformity rule (58 FR 62188). The preamble also describes how to establish the MVEB in the SIP and revise the MVEB.

The State of Georgia, after interagency consultation with the transportation partners for the Atlanta 8-Hour Ozone Area, elected to develop regional MVEBs for NO_X and VOC for this entire area through an Early Progress Plan. The regional MVEBs for the Atlanta 8-Hour Ozone Nonattainment Area are established for the year 2006, and are defined in the table below.

TABLE 1.—ATLANTA 8-HOUR OZONE AREA MVEBS

[Tons per day]

	2006
NO_X	306.75
VOC	172.27

Through this rulemaking, EPA is approving the 2006 regional MVEBs for NO_X and VOC for the Atlanta 8-Hour Ozone Area because EPA has determined that the MVEBs contained in the Early Progress SIP revision are consistent with emissions from all sources within the nonattainment area (when projected from the base to a future year) in showing some progress toward attainment. In a previous action, EPA has already found these MVEBs adequate, so they must be used for future conformity determinations.

IV. What Are the Criteria for Early Progress Plans?

EPA allows for the establishment of MVEBs for the 8-hour ozone standard prior to a state submitting its first required 8-hour ozone SIP that would include new MVEBs. Although voluntary, these ''early'' MVEBs must be established through a plan that meets all the requirements of a SIP submittal. This plan is known as the ''Early Progress Plan.'' Specifically and in reference to Early Progress Plans, the preamble of the July 1, 2004, final transportation conformity rule (see, 69 FR 40019) reads as follows:

''The first 8-hour ozone SIP could be a control strategy SIP required by the Clean Air Act (e.g., rate-of-progress SIP or attainment demonstration) or a maintenance plan. However, 8-hour ozone nonattainment areas 'are free to establish, through the SIP process, a motor vehicle emissions budget or budgets that addresses the new NAAQS in advance of a complete SIP attainment demonstration. That is, a state could submit a motor vehicle emission budget that does not demonstrate attainment but is consistent with projections and commitments to control measures and achieves some progress toward attainment' (August 15, 1997, 62 FR 43799). A SIP submitted earlier than otherwise required can demonstrate a significant level of emissions reductions from current level of emissions, instead of a specific percentage required by the Clean Air Act for moderate and above ozone areas.''

The Early Progress Plan must demonstrate that the SIP revision containing the MVEBs, when considered with emissions from all sources, and when projected from the base year to a future year, show some progress toward attainment. EPA has previously indicated that a 5 percent to 10 percent reduction in emissions from all sources could represent a significant level of emissions reductions from current levels (69 FR 40019). This allowance is provided so that areas have an opportunity to use the budget test to demonstrate conformity as opposed to the interim conformity tests (i.e., 2002 baseline test and/or ''build-no greater-than-no build test'') [4]. The budget test with an adequate or approved SIP budget is generally more protective of air quality and provides a more relevant basis for conformity determinations than the interim emissions test. (69 FR 40026).

It should also be noted that the Early Progress Plan is not a required plan and does not substitute for required submissions such as an attainment demonstration or rate-of-progress plan, if such plans become required for the Atlanta 8-Hour Ozone Area.

V. Why Is EPA Taking This Action?

On January 16, 2007, EPA received a request to approve the Early Progress Plan for the Atlanta 8-Hour Ozone Area for the sole purpose of establishing 8-hour ozone MVEBs for the entire 20-county 8-hour ozone nonattainment area. EPA's evaluation indicates that Georgia has demonstrated that the MVEBs in the Early Progress Plan are consistent with a demonstration that shows some progress towards attainment of the 8-hour ozone standard.

VI. What Is the Effect of EPA's Action?

Approval of Atlanta's Early Progress Plan into the Georgia SIP would establish regional 8-hour ozone MVEBs for NO_X and VOC for the Atlanta 8-Hour Ozone Area. The regional MVEBs for the year 2006 are 306.75 tons per day (tpd) for NO_X and 172.27 tpd for VOC. As of April 24, 2007, the effective date of EPA's adequacy finding for these MVEBs, conformity determinations in Atlanta must meet the budget test using these 8-hour MVEBs, instead of the 1-hour ozone MVEBs and 2002 baseline year test. The CAA requires that conformity of the transportation plans and transportation improvement programs be determined within two years of EPA's adequacy finding for MVEBs, or within two years of EPA's approval of the SIP that includes them if the MVEBs have not already been found adequate (see, CAA section 176(c)(2)(E)).

Submittal (and consequently approval) of Atlanta's Early Progress Plan does not satisfy the requirement for Georgia to provide a full 8-hour ozone attainment demonstration or rate-of-progress plan, when these SIP revisions become required for the Atlanta 8-Hour Ozone Area. In its revision, Georgia indicated that they have included reductions from outside the nonattainment area towards the progress demonstration for the Atlanta Early Progress SIP. However, since the development of this SIP revision by Georgia, the D.C. Circuit Court of Appeals vacated and remanded the policy provision of EPA's Phase II Ozone Implementation Rule (70 FR 71612, November 11, 2005) that allowed rate of progress/reasonable further progress credit for reductions to come from outside the nonattainment area. *See, NRDC* v. *EPA,* 2007 U.S. App. Lexis 25796 (November 2, 2007). EPA is now reconsidering its Phase II Rule. See, *http://www.epa.gov/air/ozonepollution/pdfs/20061211_reconsideration_fs.pdf*, for more information. Even if EPA determines, after reconsideration, that it is not appropriate to allow credit for reductions from outside the nonattainment area, it is still appropriate to approve this voluntary Early Progress Plan because sufficient reductions occur within the nonattainment area. Additionally, the reductions from outside the nonattainment were not used by the State of Georgia to demonstrate the progress necessary for this nonattainment area to establish Early Progress MVEBs.

VII. What Is EPA's Analysis of the Request?

On January 16, 2007, EPA received a request for approval of an Early Progress Plan for the sole purpose of establishing MVEBs for the 20-county Atlanta 8-Hour Ozone Area. The submittal utilizes a base year of 2002 to establish NO_X and VOC MVEBs for the year 2006. The planning assumptions used to develop the MVEBs were discussed and agreed to by the Atlanta interagency consultation group, which consists of the transportation and air quality partners in the Atlanta 8-hour ozone

[4] See, EPA's Transportation Conformity Rule at 40 CFR part 93 for more information on the interim tests.

nonattainment area. The total emissions in 2002 from point, area, nonroad and mobile sources for the Atlanta 8-Hour Ozone Area equaled 642.3 tpd of NO_X and 713.7 tpd of VOC. The projected total emissions for the aforementioned source categories for 2006 for Atlanta equaled 525.4 tpd of NO_X and 602.4 tpd of VOC. This represents an 18 percent reduction in NO_X and a 16 percent reduction in VOC emissions from 2002 to 2006 from sources located within the 20-county nonattainment area, which is a greater reduction than necessary to represent a significant level of emissions reductions. Tables 2 and 3 below show the 2002 actual emissions and 2006 emission projections for point, area, nonroad and mobile source reductions.

TABLE 2.—ATLANTA 8-HOUR OZONE AREA NO_X EMISSIONS

[Tons per day]

Source category	2002	2006
Point	139.8	80.8
Area	32.5	32.7
On-road Mobile*	342.14	306.72
Nonroad	127.9	105.1
Total**	642.3	525.4

* Calculated using MOBILE 6.2.

** There may be a slight difference for this total due to various rounding conventions used by the State to generate the emissions for point, area, onroad mobile and nonroad sources.

TABLE 3.—ATLANTA 8-HOUR OZONE AREA VOC EMISSIONS

[Tons per day]

Source category	2002	2006
Point	20.6	19.6
Area	347.6	326.4
On-road Mobile*	224.66	***172.22
Nonroad	120.9	84.2
Total**	713.7	***602.4

* Calculated using MOBILE 6.2.

** There may be a slight difference for this total due to various rounding conventions used by the State to generate the emissions for point, area, onroad mobile and nonroad sources.

*** Including the senior inspection & maintenance exemption, this total is 172.27 tpd, indicating a grand total of 602.45.

The 2006 MVEBs, as discussed in Section III of this rulemaking, are consistent with Georgia's 2002 emission baseline and 2006 projected inventories for on-road mobile sources. Atlanta's Early Progress Plan, including the 2006 MVEBs, is approvable because the SIP revision meets all applicable requirements for a voluntary Early Progress Plan. In a separate action, EPA has already found these MVEBs adequate for transportation conformity purposes. Please see Section VIII of this rulemaking for more details on the adequacy process.

VIII. What Is the Status of EPA's Adequacy Determination for MVEBs for the Atlanta 8-Hour Ozone Area?

Under section 176(c) of the CAA, new transportation projects, such as the construction of new highways, must ''conform'' to (i.e., be consistent with) the part of the state's air quality plan (or SIP) that addresses pollution from cars and trucks. ''Conformity'' to the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS. If a transportation plan does not ''conform,'' most new projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of such transportation activities to a SIP. The regional emissions analysis is one, but not the only, requirement for implementing transportation conformity. Transportation conformity is a requirement for nonattainment and maintenance areas. Maintenance areas are those that were previously nonattainment for a particular NAAQS but have since been redesignated to attainment with a maintenance plan for that NAAQS.

When reviewing submitted ''control strategy'' SIPs or maintenance plans containing MVEBs, EPA must affirmatively find the MVEB contained therein ''adequate'' for use in determining transportation conformity. Once EPA affirmatively finds the submitted MVEB is adequate for transportation conformity purposes, that MVEB can be used by state and Federal agencies in determining whether proposed transportation projects ''conform'' to the SIP as required by section 176(c) of the CAA.

EPA's substantive criteria for determining ''adequacy'' of an MVEB are set out in 40 CFR 93.118(e)(4). The process for determining ''adequacy'' consists of three basic steps: Public notification of a SIP submission, a public comment period, and EPA's adequacy finding. This process for determining the adequacy of submitted SIP MVEBs was initially outlined in EPA's May 14, 1999, guidance, ''Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision.'' This guidance was finalized in the Transportation Conformity Rule Amendments for the ''New 8-Hour Ozone and PM2.5 National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; transportation conformity rule amendments—Response to Court Decision and Additional Rule Change,'' on July 1, 2004 (69 FR 40004). EPA follows this guidance and rulemaking in making its adequacy determinations.

Atlanta's Early Progress Plan submission contained new regional NO_X and VOC MVEBs for the Atlanta 8-Hour Ozone Area for the year 2006. The availability of the Georgia SIP submission with the Atlanta MVEBs was available for public comment on EPA's adequacy Web page on October 30, 2006, at: *http://www.epa.gov/otaq/stateresources/transconf/currsips.htm*. The EPA public comment period on adequacy of the 2006 regional MVEBs for the Atlanta 8-Hour Ozone Area closed on November 29, 2006. EPA did not receive any comments or requests for the submittal.

EPA could not complete its adequacy process until the final submission of the Early Progress Plan was provided to EPA by the State of Georgia. EPA received the final submission on January 16, 2007. On January 24, 2007, EPA Region 4 sent a letter to Georgia informing them that EPA had found the MVEBs in Atlanta Early Progress Plan, dated January 12, 2007, to be adequate for transportation conformity purposes. In the January 24, 2007, letter, EPA explained that the MVEBs would be made available for use upon the effective date of EPA's notice of adequacy for these MVEBs in the **Federal Register**.

On April 9, 2007, EPA published a notice of adequacy in the **Federal Register**, and explained to the public that the notice was simply an announcement of a finding that EPA had already made. Further, the April 9, 2007, **Federal Register** notice explained that EPA Region 4 had sent a letter to Georgia on January 24, 2007, to inform the State that the MVEBs in the Atlanta Early Progress Plan, dated January 12, 2007, were adequate for the purposes of transportation conformity (72 FR 17550).

In the April 9, 2007, **Federal Register** notice, EPA inadvertently mislabeled the Atlanta 8-hour ozone NO_X MVEB as 172.27 tpd and the VOC MVEB as 306.75 tpd. As announced in EPA's letter to Georgia on January 24, 2007, the 2006 MVEBs for the Atlanta 8-Hour Ozone Area, as established by the Early Progress Plan for Atlanta are actually 306.75 tpd for NO_X and 172.27 tpd for VOC. EPA corrected this error in a **Federal Register** notice published on August 24, 2007 (72 FR 48635). This

finding was also announced on EPA's conformity Web site: *http://www.epa.gov/otaq/stateresources/transconf/pastsips.htm*.

IX. Final Actions on Atlanta's Early Progress Plan and the 2006 MVEBs

EPA is now taking direct final action to approve the January 12, 2007, SIP revision containing Atlanta's Early Progress Plan, which includes regional MVEBs for 2006 for the entire Atlanta 8-Hour Ozone Area. EPA is approving the Early Progress Plan and the regional MVEBs for the Atlanta 8-Hour Ozone Nonattainment Area because the plan meets all the requirements of a SIP submittal, and because the MVEBs, when considered with emissions from all sources, are contained in a SIP that shows some progress towards attainment from the base year of 2002 to the target year of 2006. EPA previously made these MVEBs available for use by the transportation partners through EPA's adequacy process. These MVEBs are currently being used in this area to demonstrate transportation conformity.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective April 21, 2008 without further notice unless the Agency receives adverse comments by March 21, 2008.

If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on April 21, 2008 and no further action will be taken on the proposed rule.

X. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by *April 21, 2008*. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: February 6, 2008.

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart L—Georgia

■ 2. Section 52.570 (e) is amended by adding a new entry at the end of the table for ''27. Atlanta Early Progress Plan'' to read as follows:

§ 52.570 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED GEORGIA NON-REGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date
*	* * * *	*	*
27. Atlanta Early Progress Plan.	Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Hall, Henry, Newton, Paulding, Rockdale, Spalding and Walton counties.	1/12/07	2/20/08 [Insert first page of publication].

[FR Doc. E8–2706 Filed 2–19–08; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2007–0223; FRL–8344–7]

1-Propanesulfonic acid, 2-methyl-2-[(1-oxo-2-propenyl)amino]-, monosodium salt, polymer with ethenol and ethenyl acetate; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of 1-propanesulfonic acid, 2-methyl-2-[(1-oxo-2-propenyl)amino]-, monosodium salt, polymer with ethenol and ethenyl acetate (CAS Reg. No. 107568–12–7) when used as an inert ingredient in a pesticide chemical formulation. Keller and Heckman, LLP submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA) requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of 1-propanesulfonic acid, 2-methyl-2-[(1-oxo-2-propenyl)amino]-, monosodium salt, polymer with ethenol and ethenyl acetate.

DATES: This regulation is effective February 20, 2008. Objections and requests for hearings must be received on or before April 21, 2008, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–0223. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Karen Samek, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 347–8825; e-mail address: *samek.karen@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

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

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, as amended by FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2007–0223 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before April 21, 2008.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2007–0223, by one of the following methods.

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

II. Background and Statutory Findings

In the **Federal Register** on April 30, 2007 (72 FR 21261) (FRL–8124–5), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, as amended by FQPA (Public Law 104–170), announcing the filing of a pesticide petition (PP 7E7193) by Keller and Heckman LLP, 1001 G St., NW., Suite 500 West, Washington, DC 20001. The petition requested that 40 CFR 180.960 be amended by establishing an exemption from the requirement of a tolerance for residues of 1-propanesulfonic acid, 2-methyl-2-[(1-oxo-2-propenyl)amino]- monosodium salt, polymer with ethenol and ethenyl acetate; CAS Reg. No. 107568–12–7. That notice included a summary of the petition prepared by the petitioner. There were no comments in response to the notice of filing.

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

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Risk Assessment and Statutory Findings

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be shown that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness, reliability, and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. In the case of certain chemical substances that are defined as polymers, the Agency has established a set of criteria to identify categories of polymers that should present minimal or no risk. The definition of a polymer is given in 40 CFR 723.250(b) and the exclusion criteria for identifying these low-risk polymers are described in 40 CFR 723.250(d). 1-Propanesulfonic acid, 2-methyl-2-[(1-oxo-2-propenyl)amino]-monosodium salt, polymer with ethenol and ethenyl acetate conforms to the definition of a polymer given in 40 CFR 723(b) and meets the following criteria that are used to identify low risk polymers:

1. The polymer is not a cationic polymer nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.
2. The polymer does contain as an integral part of its composition the atomic elements carbon, hydrogen, and oxygen.
3. The polymer does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(ii).
4. The polymer is neither designed nor can it be reasonably anticipated to substantially degrade, decompose, or depolymerize.
5. The polymer is manufactured or imported from monomers and/or reactants that are already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.
6. The polymer is not a water absorbing polymer with a number average molecular weight (MW) greater than or equal to 10,000 daltons.

Additionally, the polymer, also meets as required the following exemption criteria specified in 40 CFR 723.250(e).

7. The polymer's number average MW of 55,000 daltons is greater than or equal to 10,000 daltons. The polymer contains less than 2% oligomeric material below MW 500 and less than 5% oligomeric material below MW 1,000.

Thus, 1-propanesulfonic acid, 2-methyl-2-[(1-oxo-2-propenyl)amino]-monosodium salt, polymer with ethenol and ethenyl acetate meets all the criteria for a polymer to be considered low risk

under 40 CFR 723.250. Based on its conformance to the criteria in this unit, no mammalian toxicity is anticipated from dietary, inhalation, or dermal exposure to 1-propanesulfonic acid, 2-methyl-2-[(1-oxo-2-propenyl)amino]- monosodium salt, polymer with ethenol and ethenyl acetate.

V. Aggregate Exposures

For the purposes of assessing potential exposure under this exemption, EPA considered that 1-propanesulfonic acid, 2-methyl-2-[(1-oxo-2-propenyl)amino]- monosodium salt, polymer with ethenol and ethenyl acetate could be present in all raw and processed agricultural commodities and drinking water, and that non-occupational non-dietary exposure was possible. The number average MW of 1-propanesulfonic acid, 2-methyl-2-[(1-oxo-2-propenyl)amino]- monosodium salt, polymer with ethenol and ethenyl acetate is 50,000 daltons. Generally, a polymer of this size would be poorly absorbed through the intact gastrointestinal tract or through intact human skin. Since 1-propanesulfonic acid, 2-methyl-2-[(1-oxo-2-propenyl)amino]- monosodium salt, polymer with ethenol and ethenyl acetate conforms to the criteria that identify a low-risk polymer, there are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable. The Agency has determined that a tolerance is not necessary to protect the public health.

VI. Cumulative Effects

Section 408 (b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance or tolerance exemption, the Agency consider ''available information'' concerning the cumulative effects of a particular chemical's residues and ''other substances that have a common mechanism of toxicity.'' EPA does not have, at this time, available data to determine whether 1-propanesulfonic acid, 2-methyl-2-[(1-oxo-2-propenyl)amino]- monosodium salt, polymer with ethenol and ethenyl acetate has a common mechanism of toxicity with other substances. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to 1-propanesulfonic acid, 2-methyl-2-[(1-oxo-2-propenyl)amino]- monosodium salt, polymer with ethenol and ethenyl acetate and any other substances and 1-propanesulfonic acid, 2-methyl-2-[(1-oxo-2-propenyl)amino]- monosodium salt, polymer with ethenol and ethenyl acetate does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that 1-propanesulfonic acid, 2-methyl-2-[(1-oxo-2-propenyl)amino]- monosodium salt, polymer with ethenol and ethenyl acetate has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative*.

VII. Additional Safety Factor for the Protection of Infants and Children

Section 408 of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-natal and post-natal toxicity and the completeness of the data base unless EPA concludes that a different margin of safety will be safe for infants and children. Due to the expected low toxicity of 1-propanesulfonic acid, 2-methyl-2-[(1-oxo-2-propenyl)amino]- monosodium salt, polymer with ethenol and ethenyl acetate, EPA has not used a safety factor analysis to assess the risk. For the same reasons the additional tenfold safety factor is unnecessary.

VIII. Determination of Safety

Based on the conformance to the criteria used to identify a low-risk polymer, EPA concludes that there is a reasonable certainty of no harm to the U.S. population, including infants and children, from aggregate exposure to residues of 1-propanesulfonic acid, 2-methyl-2-[(1-oxo-2-propenyl)amino]- monosodium salt, polymer with ethenol and ethenyl acetate.

IX. Other Considerations

A. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

B. International Tolerances

The Agency is not aware of any country requiring a tolerance for 1-propanesulfonic acid, 2-methyl-2-[(1-oxo-2-propenyl)amino]- monosodium salt, polymer with ethenol and ethenyl acetate nor have any CODEX Maximum Residue Levels (MRLs) been established for any food crops at this time.

X. Conclusion

Accordingly, EPA finds that exempting residues of 1-propanesulfonic acid, 2-methyl-2-[(1-oxo-2-propenyl)amino]- monosodium salt, polymer with ethenol and ethenyl acetate from the requirement of a tolerance will be safe.

XI. Statutory and Executive Order Reviews

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

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

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

the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000) do not apply to this rule. In addition, This rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

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

XII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: February 6, 2008.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. In §180.960, the table is amended by alphabetically adding the following polymer to read as follows:

§ 180.960 Polymers; exemptions from the requirement of a tolerance.

* * *

Polymer	CAS Reg. No.
* * *	* *
1-propanesulfonic acid, 2-methyl-2-[(1-oxo-2-propenyl)amino]-, monosodium salt, polymer with ethenol and ethenyl acetate, minimum number average molecular weight (in amu) 50,000.	107568-12-7
* * *	* *

[FR Doc. E8–3126 Filed 2–19–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2005–0306; FRL–8347–8]

Vitamin E, d-alpha tocopherol, dl-alpha tocopherol, d-alpha tocopheryl acetate, and dl-alpha tocopheryl acetate; Inert Ingredients; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance under 40 CFR 180.910 for residues of vitamin E (CAS Reg. No. 1406–18–4), d-alpha tocopherol (CAS Reg. No. 9–02–9), dl-alpha tocopherol (CAS Reg. No.10191–41–0), d–alpha tocopheryl acetate (CAS Reg. No. 58–95–7), and dl-alpha tocopheryl acetate (CAS Reg. No. 7695–91–2) in or on raw agricultural commodities when applied or used as inert ingredients in pesticide formulations. Because these five substances are chemically-similar, for the sake of simplicity, discussion of vitamin E in this rule (unless otherwise noted) can be considered to be vitamin E *per se* and/or one of the two alcohols (d-alpha tocopherol, dl-alpha tocopherol) or two acetates (d-alpha tocopheryl acetate, dl-alpha tocopheryl acetate). BASF Corporation submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996, requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of vitamin E.

DATES: This regulation is effective February 20, 2008. Objections and requests for hearings must be received on or before April 21, 2008, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2005–0306. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Kathleen Martin, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–2857; e-mail address: *martin.kathleen@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

This listing is not intended to be exhaustive, but rather provides a guide

for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in 40 CFR 152. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

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

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, as amended by FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2005–0306 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before April 21, 2008.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2005–0306, by one of the following methods:

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

II. Background and Statutory Findings

In the **Federal Register** of April 4, 2007 (72 FR 16352) (FRL–8119–2), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 5E6996) by BASF Corporation, PO Box 13528; Research Triangle Park, NC 27709. The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of d-alpha tocopherol, d-alpha tocopheryl acetate, dl-alpha tocopherol acetate, dl-alpha tocopheryl, and/or vitamin E. That notice included a summary of the petition prepared by the petitioner BASF Corporation. Please note that the April 4, 2007 notice amended a previous Notice of Filing for that petition; it was published on January 18, 2006 (71 FR 2925) and was limited to a single substance, alpha-tocopherol (CAS Reg. No. 10191–41–0). BASF asked to amend the petition because it was too narrowly defined: ''Alpha-tocopherol is known to be the most biologically active form of Vitamin E. However, the ester of alpha-tocopherol (alpha-tocopheryl acetate) is also a common source of Vitamin E. Alpha-tocopheryl acetate is converted to alpha-tocopherol in the body upon ingestion. For purposes of this rule, BASF requests that the acetate and alcohol forms of Vitamin E be viewed as equivalent substances and that the existing petition 5E6996 be amended to include the closely related Vitamin E substances.'' Between the two notices, one comment was received in response to the notices of filing; it was addressed.

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

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. The following provides a brief summary of the risk assessment and conclusions for the Agency's review of vitamin E. The full decision document for this action is available on EPA's Electronic Docket at *http://www.regulations.gov/* under docket number EPA–HQ–OPP–2005–0306.

III. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by vitamin E is discussed in this unit.

In brief, the Agency reviewed the available information on vitamin E submitted by the petitioner as well as additional information available to EPA in two international, peer-reviewed evaluations of vitamin E. The toxicity database is sufficient. In summary, vitamin E has low acute oral toxicity. Alpha-tocopherol has an lethal dose

$(LD)_{50}$ greater than 2,000 milligrams/kilograms bodyweight (mg/kg bw) in mice, rats, and rabbits. In subchronic toxicity testing vitamin E appears to elicit systemic toxicity to rats only at high doses, with the target organs being the liver and blood. Vitamin E has not been shown to be neurotoxic, mutagenic, or carcinogenic. Finally, no developmental and reproductive effects have been shown.

IV. Aggregate Exposures

In examining aggregate exposure, FFDCA section 408 directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from groundwater or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

EPA does not have information available to assess the potential for exposure to vitamin E in consumer products. Nevertheless, given vitamin E's known role in human physiology and its presence in various foods such as nuts and vegetable oils, it is unlikely that residential exposures of concern would result from the use of vitamin E in nonpesticide products and as an ingredient in pesticide. Therefore, no further aggregate assessment is necessary.

Dietary Exposure

1. *Food*. EPA estimated dietary exposures for use of vitamin E as an inert ingredient using Dietary Exposure Evaluation Model (DEEM™), a generic screening model that assumes that the inert ingredient is used on all commodities and that 100 percent of crops are treated with the inert ingredient. Generic chronic exposure for the overall U.S. population was estimated at 0.12 mg/kg/day.

2. *Drinking water exposure*. Surface water concentration of vitamin E was estimated at 0.065 parts per billion (ppb); EPA's Pesticide Root Zone Model - Exposure Analysis Modeling System (PRZM-EXAMS) model was used. Groundwater concentration was estimated at 0.0015 ppb using EPA's screening concentration in groundwater (SCI-GROW) model.

V. Cumulative Effects

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

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to vitamin E (CAS Reg. Nos. 1406–18–4; 59–02–9; 10191–41–0; 58–95–7; and 7695–91–2) and any other substances and, this material does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that vitamin E (CAS Reg. Nos. 1406–18–4; 59–02–9; 10191–41–0; 58–95–7; and 7695–91–2) has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs (OPP) concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative/*.

VI. Determination of Safety for U.S. Population, Infants and Children

Based on the information in this preamble, EPA concludes that there is a reasonable certainty of no harm from aggregate exposure to residues. Accordingly, EPA finds that exempting from the requirement of a tolerance will be safe.

VII. Other Considerations

A. Analytical Method(s)

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

B. International Tolerances

The Agency is not aware of any country requiring a tolerance for vitamin E (CAS Reg. No. 1406–18–4), d-alpha tocopherol (CAS Reg. No. 9–02–9), dl-alpha tocopherol (CAS Reg. No.10191–41–0), d–alpha tocopheryl acetate (CAS Reg. No. 58–95–7), or dl-alpha tocopheryl acetate (CAS Reg. No. 7695–91–2), nor have any CODEX Maximum Residue Levels (MRLs) been established for any food crops at this time.

VIII. Statutory and Executive Order Reviews

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

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

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section

12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

IX. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: February 6, 2008.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. In section 180.910 the table is amended by adding alphabetically the following inert ingredients to read as follows:

§ 180.910 Inert ingredients used pre-harvest and post-harvest; exemptions from the requirement of a tolerance.

* * * * *

Inert ingredients	Limits	Uses
* * *	* *	* *
d-Alpha tocopherol (CAS Reg. No. 9–02–9	None	Safener
d-Alpha tocopheryl acetate (CAS Reg. No. 58–95–7)	None	Safener
dl-Alpha tocopherol (CAS Reg. No.10191–41–0)	None	Safener
dl-Alpha tocopheryl acetate (CAS Reg. No. 7695–91–2)	None	Safener
* * *	* *	* *
Vitamin E (CAS Reg. No. 1406–18–4)	None	Safener
* * *	* *	* *

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2007–0193; FRL–8349–4]

Carfentrazone-ethyl; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of carfentrazone-ethyl, (ethyl-alpha-2-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1H-1,2,4-triazol-1-yl]-4-fluorobenzene propanoate) and the metabolite carfentrazone-chloropropionic acid (alpha, 2-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1H-1,2,4-triazol-1-yl]-4-fluorobenzenepropanoic acid) in or on barley, bran at 0.80 ppm; barley, flour at 0.80 ppm; grain, aspirated grain fractions at 1.8 ppm; grain, cereal, group 15 (except rice grain and sorghum grain) at 0.10 ppm; grain, cereal, stover at 0.80 ppm; grain, cereal, straw at 3.0 ppm; hog, fat at 0.10 ppm; hog, meat at 0.10 ppm; hog, meat byproducts at 0.10 ppm; millet, flour at 0.80 ppm; oat, flour at 0.80 ppm; poultry, meat byproducts at 0.10 ppm; rice, grain at 1.3 ppm; rice, hulls at 3.5 ppm; rye, bran at 0.80 ppm; rye, flour at 0.80 ppm; sorghum, grain at 0.25 ppm; soybean, seed at 0.10 ppm; sugarcane at 0.15 ppm; wheat, bran at 0.80 ppm; wheat, flour at 0.80 ppm; wheat, germ at 0.80 ppm; wheat, middlings at 0.80 ppm; and wheat, shorts at 0.80 ppm. FMC Corporation requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective February 20, 2008. Objections and requests for hearings must be received on or before April 21, 2008, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–0193. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

• Crop production (NAICS code 111), e.g., agricultural workers; greenhouse,

nursery, and floriculture workers; farmers.

• Animal production (NAICS code 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.

• Food manufacturing (NAICS code 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.

• Pesticide manufacturing (NAICS code 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

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

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

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

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2007–0193 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before April 21, 2008.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA–HQ–OPP–2007–0193 by one of the following methods:

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

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

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

II. Petition for Tolerance

In the **Federal Register** of June 27, 2007 (72 FR 35240) (FRL–8133–4), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 6F7145) by FMC Corporation, 1735 Market Street, Philadelphia, PA 19103. The petition requested that 40 CFR 180.515 be amended by establishing a tolerance for residues of the herbicide carfentrazone-ethyl, (ethyl-alpha-2-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1H-1,2,4-triazol-1-yl]-4-fluorobenzene propanoate) and the metabolite carfentrazone-chloropropionic acid (alpha, 2-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1H-1,2,4-triazol-1-yl]-4-fluorobenzenepropanoic acid) in or on barley, bran at 0.80 ppm; barley, flour at 0.80 ppm; grain, aspirated grain fractions at 1.8 ppm; grain, cereal, group 15 (except rice grain and sorghum grain) at 0.10 ppm; grain, cereal, stover at 0.80 ppm; grain, cereal, straw at 3.0 ppm; hog, fat at 0.10 ppm; hog, meat at 0.10 ppm; hog, meat byproducts at 0.10 ppm; millet, flour at 0.80 ppm; oat, flour at 0.80 ppm; poultry, meat byproducts at 0.10 ppm; rice, grain at 1.3 ppm; rice, hulls at 3.5 ppm; rye, bran at 0.80 ppm; rye, flour at 0.80 ppm; sorghum, grain at 0.25 ppm; soybean, seed at 0.10 ppm; sugarcane at 0.15 ppm; wheat, bran at 0.80 ppm; wheat, flour at 0.80 ppm; wheat, germ at 0.80 ppm; wheat, middlings at 0.80 ppm; and wheat, shorts at 0.80 ppm. There were no comments received in response to the notice of filing.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .'' These provisions were added to FFDCA by the Food Quality Protection Act (FQPA) of 1996.

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for tolerance for carfentrzone-ethyl. EPA's assessment of exposures and risks associated with establishing the petitioned-for tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Carfentrazone-ethyl has low acute oral, dermal, and inhalation toxicity (Toxicity Category 3-4). It is non-irritating to skin and minimally irritating to eyes. It is not a skin sensitizer. The subchronic toxicity studies in rats, mice, and dogs demonstrated that the primary effects of carfentrazone-ethyl were on hermatology parameters (decreased mean corpuscular hemoglobin: MCH,

mean corpuscular volume: MCV), urinary porphyrin excretion (increased), liver weights (increased), and histopathology. The chronic toxicity studies in rats and dogs demonstrated increased urinary porphyrin and microscopic examination showed hepatoxicity in rats and mice. Fluorescence microscopy on liver sections also revealed red fluorescent granules consistent with porphryin deposits in rats and mice. In carcinogenicity studies in mice and rats, there was no indication of increased incidence of neoplasms and spontaneous tumor formation at the doses tested. The results of the 2–generation reproduction and developmental toxicity studies indicated that carfentrazone-ethyl is not a developmental or reproductive toxicant. The acute and subchronic neurotoxicity studies showed that carfentrazone-ethyl is not neurotoxic. The mutagenic test battery demonstrated that carfentrazone-ethyl is not mutagenic. Specific information on the studies received and the nature of the adverse effects caused by carfentrazone-ethyl as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies are discussed in the final rule published in the **Federal Register** of August 9, 2000 (65 FR 48621–48623) (FRL–6597–7).

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, the toxicological level of concern (LOC) is derived from the highest dose at which no adverse effects are observed (the NOAEL) in the toxicology study identified as appropriate for use in risk assessment. However, if a NOAEL cannot be determined, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment. Uncertainty/safety factors (UFs) are used in conjunction with the LOC to take into account uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. Safety is assessed for acute and chronic risks by comparing aggregate exposure to the pesticide to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD are calculated by dividing the LOC by all applicable UFs. Short-, intermediate-, and long-term risks are evaluated by comparing aggregate exposure to the LOC to ensure that the margin of exposure (MOE) called for by the product of all applicable UFs is not exceeded.

For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk and estimates risk in terms of the probability of occurrence of additional adverse cases. Generally, cancer risks are considered non-threshold. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/fedrgstr/EPA-PEST/1997/November/Day-26/p30948.htm*.

A summary of the toxicological endpoints for carfentrazone-ethyl used for human risk assessment can be found at *http://www.regulations.gov* in the document titled ''Human Heath Risk Assessment'' at page 9 in docket ID number EPA–HQ–OPP–2007–0193.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. In evaluating dietary exposure to carfentrazone-ethyl, EPA considered exposure under the petitioned-for tolerances as well as all existing carfentrazone-ethyl tolerances in (40 CFR 180.515). EPA assessed dietary exposures from carfentrazone-ethyl in food as follows:

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

In estimating acute dietary exposure, EPA used food consumption information from the U.S. Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA assumed all foods for which there are tolerances were treated and contain tolerance-level residues.

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 CSFII. As to residue levels in food, EPA assumed all foods for which there are tolerances were treated and contain tolerance-level residues.

iii. *Cancer*. Carfentrazone-ethyl is classified as ''not likely'' a human carcinogen and therefore an exposure assessment for assessing cancer risk is unnecessary.

iv. *Anticipated residue and percent crop treated (PCT) information*. EPA did not use anticipated residues or PCT information in the dietary assessment for carfentrazone-ethyl. The acute and dietary exposure analyses were based on tolerance level residues and 100 PCT assumptions.

2. *Dietary exposure from drinking water*. The Agency lacks sufficient monitoring data to complete a comprehensive dietary exposure analysis and risk assessment for carfentrazone-ethyl in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the environmental fate characteristics of carfentrazone-ethyl. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm*.

Based on the First Index Reservoir Screening Tool (FIRST) and Screening Concentration in Ground Water (SCI-GROW) models, the estimated environmental concentrations (EECs) of carfentrazone-ethyl for acute exposures are estimated to be 34.3 parts per billion (ppb) for surface water and 13.4 ppb for ground water. The EECs for chronic exposures are estimated to be 19.0 ppb for surface water and 13.4 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 34.3 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration of value 19.0 ppb was used to assess the contribution to drinking water.

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

Carfentrazone-ethyl is currently registered for the following residential non-dietary sites: Ornamental lawns and turf (application by commercial operators only). Residential exposure is also anticipated from aquatic applications of carfentrazone-ethyl. The risk assessment was conducted using the following residential exposure assumptions: Exposures to toddlers in the residential lawn setting would be higher than that encountered by toddlers in an institutional setting, such as in schools and parks. It was anticipated that herbicide application to homeowner lawns is a seasonal event, thus, only short-term post-application residential exposures were conducted. A swimmer exposure assessment was conducted based on the aquatic

application. The swimmer assessment estimates exposures from oral (ingestion) and inhalation routes.

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

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

D. Safety Factor for Infants and Children

1. *In general*. Section 408 of FFDCA provides that EPA shall apply an additional (''10X'') tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA safety factor. In applying this provision, EPA either retains the default value of 10X when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional FQPA safety factor value based on the use of traditional UFs and/or special FQPA safety factors, as appropriate.

2. *Prenatal and postnatal sensitivity*. There was no indication of increased susceptibility of rats or rabbits to *in utero* and/or postnatal exposure to carfentrazone-ethyl. There is no uncertainty for prenatal and/or postnatal toxicity.

3. *Conclusion*. EPA has determined that reliable data show that it would be safe for infants and children to reduce the FQPA safety factor to 1X. That decision is based on the following findings:

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

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

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

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues. Conservative ground and surface water modeling estimates were used. Similarly conservative Residential Standard Operating Procedures were used to assess post-application exposure to children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by carfentrazone-ethyl.

E. Aggregate Risks and Determination of Safety

Safety is assessed for acute and chronic risks by comparing aggregate exposure to the pesticide to the aPAD and cPAD. The aPAD and cPAD are calculated by dividing the LOC by all applicable UFs. For linear cancer risks, EPA calculates the probability of additional cancer cases given aggregate exposure. Short-, intermediate-, and long-term risks are evaluated by comparing aggregate exposure to the LOC to ensure that the MOE called for by the product of all applicable UFs is not exceeded.

1. *Acute risk*. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to carfentrazone-ethyl will occupy 1% of the aPAD for the population group (children 1-2 years old) receiving the greatest exposure.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to carfentrazone-ethyl from food and water will utilize 89% of the cPAD for the population group (children 1-2 years old) receiving the greatest exposure. Based on the use pattern, chronic residential exposure to residues of carfentrazone-ethyl is not expected.

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

Carfentrazone-ethyl is currently registered for uses that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term exposures for carfentrazone-ethyl.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded that food, water, and residential exposures aggregated result in aggregate MOEs of: General U.S. population = 54,000; infants < 1 year old = 30,000; children 1-2 years old = 18,000; children 3-5 years old = 23,000; children 6-12 years old = 37,000; youth 13-19 years old = 60,000; adults 20-49 yeas old = 69,000; adults >50 years old = 73,000; and females 13-49 years old = 71,000. None of these MOEs show risks of concern.

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Residential exposure is not expected to occur over the intermediate-term. Therefore, the aggregate risk is the sum of the risk from food and water.

5. *Aggregate cancer risk for U.S. population*. Carfentrazone-ethyl is not expected to pose a cancer risk for humans.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

There is a practical method for detecting and measuring levels of carfentrazone-ethyl and its metabolites in or on food with a limit of detection that allows monitoring of food with residues at or above the levels set in these tolerances. The analytical method involves separate analyses for parent and its metabolite. The parent is analyzed by gas chromatography (GC)/electron capture detection (ECD). The metabolite is derivatized with boron trifluoride and acetic anhydride for analysis by GC/mass spectrometry detection (MSD) using selective ion monitoring. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone

number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

No Codex maximum residue limits (MRLs) have been established for residues of carfentrazone-ethyl on any crops at this time.

V. Conclusion

Therfore the tolerance is established for residues of carfentrazone-ethyl, (ethyl-alpha-2-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1H-1,2,4-triazol-1-yl]-4-fluorobenzene propanoate) and the metabolite carfentrazone-chloropropionic acid (alpha, 2-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1H-1,2,4-triazol-1-yl]-4-fluorobenzenepropanoic acid) in or on barley, bran at 0.80 ppm; barley, flour at 0.80 ppm; grain, aspirated grain fractions at 1.8 ppm; grain, cereal, group 15 (except rice grain and sorghum grain) at 0.10 ppm; grain, cereal, stover at 0.80 ppm; grain, cereal, straw at 3.0 ppm; hog, fat at 0.10 ppm; hog, meat at 0.10 ppm; hog, meat byproducts at 0.10 ppm; millet, flour at 0.80 ppm; oat, flour at 0.80 ppm; poultry, meat byproducts at 0.10 ppm; rice, grain at 1.3 ppm; rice, hulls at 3.5 ppm; rye, bran at 0.80 ppm; rye, flour at 0.80 ppm; sorghum, grain at 0.25 ppm; soybean, seed at 0.10 ppm; sugarcane at 0.15 ppm; wheat, bran at 0.80 ppm; wheat, flour at 0.80 ppm; wheat, germ at 0.80 ppm; wheat, middlings at 0.80 ppm; and wheat, shorts at 0.80 ppm.

VI. Statutory and Executive Order Reviews

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

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

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000) do not apply to this rule. In addition, This rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: February 6, 2008.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.515 is amending the table in paragraph (a) as follows:

a. By placing the entry ''Sorghum, forage'' before the entry ''Sorghum, sweet.''

b. By revising the entries for ''Soybean, seed'' and ''Sugarcane'', and

c. By alphabetically adding the other commodities to read as follows:

§ 180.515 Carfentrazone-ethyl; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * *	* *
Barley, bran	0.80
Barley, flour	0.80
* * *	* *
Grain, aspirated grain fractions	1.8
* * *	* *
Grain, cereal, group 15 (except rice grain and sorghum grain)	0.10
Grain, cereal, stover	0.80
Grain, cereal, straw	3.0
* * *	* *
Hog, fat	0.10
Hog, meat	0.10 ppm
Hog, meat byproducts	0.10
* * *	* *
Millet, flour	0.80
* * *	* *
Oat, flour	0.80
* * *	* *
Poultry, meat byproducts	0.10
* * *	* *
Rice, grain	1.3
Rice, hulls	3.5
* * *	* *
Rye, bran	0.80
Rye, flour	0.80

Commodity	Parts per million
* * *	* *
Sorghum, grain	0.25
* * *	* *
Soybean, seed	0.10
* * *	* *
Sugarcane	0.15
* * *	* *
Wheat, bran	0.80
Wheat, flour	0.80
Wheat, germ	0.80
Wheat, middlings	0.80
Wheat, shorts	0.80

* * * * *

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2007–0030; FRL–8349–7]

Mesotrione; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of mesotrione in or on asparagus, grass grown for seed, oats, okra, rhubarb, grain sorghum, sweet sorghum, and sugarcane. Syngenta Crop Protection requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective February 20, 2008. Objections and requests for hearings must be received on or before April 21, 2008, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–0030. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Erik Kraft, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9358; e-mail address: *kraft.erik @epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

- Crop production (NAICS code 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS code 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS code 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS code 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

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

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

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

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2007–0030 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before April 21, 2008.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA–HQ–OPP–2007–0030, by one of the following methods:

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

II. Petition for Tolerance

In the **Federal Register** of April 25, 2006 (71 FR 24695) (FRL–8063–7), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 6F7023) by Syngenta Crop Protection, P.O. Box 18300, Greensboro, NC. The petition requested that 40 CFR 180.571 be amended by establishing tolerances for residues of the herbicide mesotrione, 2-[4- (methylsulfonyl)-2-nitrobenzoyl]-1,3-cyclohexanedione, in or on commodity asparagus at 0.01 parts per million (ppm); grass, seed screenings at 0.10 ppm; grass, straw at 0.10 ppm; grass, forage at 0.01 ppm; grass, hay at 0.01 ppm; oats, grain, oats, straw at 0.01 ppm; oats, forage at 0.1 ppm; oats, hay at 0.01 ppm; okra at 0.01 ppm; rhubarb at 0.01 ppm; sorghum, forage at 0.01 ppm; sorghum, stover at 0.01 ppm; sorghum, grain at 0.01 ppm; sorghum, sweet at 0.01 ppm; and sugarcane at 0.01 ppm. That notice referenced a summary of the petition prepared by Syngenta Crop Protection, the registrant, which is available to the public in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, to harmonize with the Food and Feed Commodity Vocabulary *http://www.epa.gov/opphed01/foodfeed/index.htm*. EPA has amended the commodity listing to read: Asparagus at 0.01 ppm; grass, seed screenings at 0.10 ppm; grass, straw at 0.10 ppm; grass, forage at 0.01 ppm; grass, hay at 0.01 ppm; oat, grain at 0.01 ppm; oat, straw at 0.01 ppm; oat, forage at 0.01 ppm; oat, hay at 0.01 ppm; okra at 0.01 ppm; rhubarb at 0.01 ppm; sorghum, grain, forage at 0.01 ppm; sorghum, grain, grain at 0.01 ppm; sorghum, grain, stover at 0.01 ppm; sorghum, sweet at 0.01 ppm and sugarcane, cane at 0.01 ppm.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue.'' These provisions were added to FFDCA by the Food Quality Protection Act (FQPA) of 1996.

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for tolerance for residues of mesotrione on asparagus at 0.01 ppm; grass, seed screenings at 0.10 ppm; grass, straw at 0.10 ppm; grass, forage at 0.01 ppm; grass, hay at 0.01 ppm; oat, grain at 0.01 ppm; oat, straw at 0.01 ppm; oat, forage at 0.01 ppm; oat, hay at 0.01 ppm; okra at 0.01 ppm; rhubarb at 0.01 ppm; sorghum, grain, forage at 0.01 ppm; sorghum, grain, grain at 0.01 ppm; sorghum, grain, stover at 0.01 ppm; sorghum, sweet at 0.01 ppm and sugarcane, cane at 0.01 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Mesotrione has low acute toxicity via the oral, dermal, and inhalation routes. It is a mild eye irritant, but is not a dermal irritant or a dermal sensitizer. In subchronic and chronic oral studies, ocular lesions, liver and kidney effects, and/or body weight decrements were the major adverse effects seen in the rat, mouse, and dog. Plasma tyrosine levels were increased in the rat, mouse and dog in the chronic and reproduction studies in which levels were measured. The ocular, liver and kidney effects are believed to be mediated by the high tyrosine levels in the blood caused by inhibition of the enzyme HPPD. Even though the rat is the most sensitive species to this effect compared to the dog and the mouse, EPA concluded that the mouse is a more appropriate model for assessing human risk than is the rat. There was no evidence of carcinogenic potential in either the rat chronic toxicity/carcinogenicity or mouse carcinogenicity studies and no concern for mutagenicity. No evidence of neurotoxicity or neuropathology was seen in the acute and subchronic neurotoxicity studies. In the multi-generation mouse reproduction study, one first generation male and one first generation female had retinal detachment with marked cataractous changes at the highest dose tested (>1000 milligrams/kilograms/day (mg/kg/day). In the subchronic toxicity dog study, the high-dose females had decreased absolute and relative brain weights; however, no microscopic abnormalities were noted in any brain tissues from the high-dose group and effect was not observed in the chronic toxicity dog study. Therefore, there is some concern about the effects of elevated plasma tyrosine levels on the developing nervous system in children due to a report that some patients with tyrosinemia III (an autosomal recessive disorder in which HPPD is deficient) were presented with mental retardation or neurological symptoms. There was evidence of increased susceptibility of rats, mice and rabbits to *in utero* and/or post-natal exposure to mesotrione. Specific information on the studies received and the nature of the adverse effects caused by mesotrione as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov*. The referenced document is available in the docket established by this action, which is described under **ADDRESSES**, and is identified as ''Petition#: 6F7162. Mesotrione: Human Health Risk Assessment for Proposed Section 3 New Uses on Asparagus, Grasses Grown for Seed, Oats, Okra, Rhubarb, Sugarcane, Grain Sorghum, Sweet Sorghum and Turf (Golf Course and Sod Farms)'' in that docket. Additionally, mesotrione toxicological data are discussed in the final rule published in the **Federal Register** of June 21, 2001 (66 FR 33187) (FRL–6787–7).

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, the toxicological level of concern (LOC) is derived from the highest dose at which no adverse effects are observed (the NOAEL) in the toxicology study identified as appropriate for use in risk assessment. However, if a NOAEL cannot be determined, the lowest dose at which adverse effects of concern are

identified (the LOAEL) is sometimes used for risk assessment. Uncertainty/safety factors (UFs) are used in conjunction with the LOC to take into account uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. Safety is assessed for acute and chronic risks by comparing aggregate exposure to the pesticide to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD are calculated by dividing the LOC by all applicable UFs. Short-, intermediate-, and long-term risks are evaluated by comparing aggregate exposure to the LOC to ensure that the margin of exposure (MOE) called for by the product of all applicable UFs is not exceeded.

For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk and estimates risk in terms of the probability of occurrence of additional adverse cases. Generally, cancer risks are considered non-threshold. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/fedrgstr/EPA-PEST/1997/November/Day-26/p30948.htm*.

A summary of the toxicological endpoints for mesotrione used for human risk assessment can be found at *http://www.regulations.gov* in document ''Petition#: 6F7162. Mesotrione: Human Health Risk Assessment for Proposed Section 3 New Uses on Asparagus, Grasses Grown for Seed, Oats, Okra, Rhubarb, Sugarcane, Grain Sorghum, Sweet Sorghum and Turf (Golf Course and Sod Farms)'' at page 15 in docket ID number EPA–HQ–OPP–2007–0030.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. In evaluating dietary exposure to mesotrione, EPA considered exposure under the petitioned-for tolerances as well as all existing mesotrione tolerances in (40 CFR 180.571). EPA assessed dietary exposures from mesotrione in food as follows:

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

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

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996, and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA assumed that all foods were treated for which there are proposed and established tolerances and that all the foods contain tolerance-level residues.

iii. *Cancer*. Mesotrione was negative for carcinogenicity in feeding studies in rats and mice and was classified as ''not likely'' to be a human carcinogen. Therefore, a quantitative exposure assessment to evaluate cancer risk is unnecessary.

2. *Dietary exposure from drinking water*.The Agency lacks sufficient monitoring data to complete a comprehensive dietary exposure analysis and risk assessment for mesotrione in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the environmental fate characteristics of mesotrione. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm*.

Based on the First Index Reservoir Screening Tool (FIRST) and Screening Concentration in Ground Water (SCI-GROW) models for turf grass (Golf Courses and Sod Farms), the estimated drinking water concentrations (EDWCs) of mesotrione for chronic exposures are estimated to be 4.7 parts per billion (ppb) for surface water and 0.18 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For chronic dietary risk assessment, the water concentration of value 4.7 ppb was used to assess the contribution to drinking water.

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

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

Mesotrione, pyrasulfotole, isoxaflutole and topramezone belong to a class of herbicides that inhibit the liver enzyme 4-hydroxyphenylpyruvate dioxygenase (HPPD), which is involved in the catabolism (metabolic breakdown) of tyrosine (an amino acid derived from proteins in the diet). Inhibition of HPPD can result in elevated tyrosine levels in the blood, a condition called tyrosinemia. HPPD-inhibiting herbicides have been found to cause a number of toxicities in laboratory animal studies including ocular, developmental, liver and kidney effects. Of these toxicities, it is the ocular effect (corneal opacity) that is highly correlated with the elevated blood tyrosine levels. In fact, rats dosed with tyrosine alone show ocular opacities similar to those seen with HPPD inhibitors. Although the other toxicities may be associated with chemically-induced tyrosinemia, other mechanisms may also be involved.

There are marked differences among species in the ocular toxicity associated with inhibition of HPPD. Ocular effects following treatment with HPPD inhibitor herbicides are seen in the rat but not in the mouse. Monkeys also seem to be recalcitrant to the ocular toxicity induced by HPPD inhibition. One explanation of this species-specific response in ocular opacity may be related to the species differences in the clearance of tyrosine. A metabolic pathway exists to remove tyrosine from the blood that involves a liver enzyme called tyrosine aminotransferase (TAT). In contrast to rats where ocular toxicity is observed following exposure to HPPD-inhibiting herbicides, mice and humans are unlikely to achieve the levels of plasma tyrosine necessary to produce ocular opacities because the activity of TAT in these species is much greater compared to rats. HPPD inhibitors (e.g., nitisinone) are used as an effective therapeutic agent to treat patients suffering from rare genetic diseases of tyrosine catabolism. Treatment starts in childhood but is often sustained throughout patient's lifetime. The human experience indicates that a therapeutic dose (1 mg/kg/day dose) of nitisinone has an excellent safety record in infants, children and adults and that serious adverse health outcomes have not been observed in a population followed for approximately a decade. Rarely, ocular effects are seen in patients with high plasma tyrosine levels; however, these effects are transient and can be readily reversed upon adherence to a restricted

protein diet. This indicates that an HPPD inhibitor in and of itself cannot easily overwhelm the tyrosine-clearance mechanism in humans.

Therefore, exposure to environmental residues of HPPD-inhibiting herbicides are unlikely to result in the high blood levels of tyrosine and ocular toxicity in humans due to an efficient metabolic process to handle excess tyrosine. The Agency continues to study the complex relationships between elevated tyrosine levels and biological effects in various species. Nonetheless, as a worst case scenario, EPA has assessed aggregate exposure to mesotrione based on ocular effects in rats. For similar reasons, a semi-quantitative screening cumulative assessment was conducted using the rat ocular effects and 100% crop treated information. The results of this screening analysis did not indicate a concern. In the future, assessments of HPPD-inhibiting herbicides will consider more appropriate models and cross species extrapolation methods. Therefore, EPA has not conducted cumulative risk assessment with other HPPD inhibitors. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www.epa.gov/pesticides/cumulative*.

D. Safety Factor for Infants and Children

1.*In general*. Section 408 of FFDCA provides that EPA shall apply an additional (''10X'') tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA safety factor. In applying this provision, EPA either retains the default value of 10X when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional FQPA safety factor value based on the use of traditional UFs and/or special FQPA safety factors, as appropriate.

2. *Pre-natal and post-natal sensitivity*. There is quantitative evidence of increased susceptibility of the young in the oral prenatal developmental toxicity studies in rats, mice, and rabbits and in the multi-generation reproduction study in mice and lack of a developmental neurotoxicity study in mice. Quantitative evidence of increased susceptibility was not demonstrated in the multi-generation reproduction study in rats. However, no NOAEL was established for parental or offspring systemic toxicity. There is evidence of a qualitative increase in susceptibility since the tyrosinemia observed in the young was much more severe than that observed in the adults.

3. *Conclusion*. There are two deficiencies in the mesotrione toxicity database. First, a Developmental Neurotoxicity Study has been required to assess the effects on the developing nervous/ocular system from exposed to mesotrione. Second, the mouse two-generation reproduction study, on which the Reference Dose/ Population Adjusted Dose [RfD/PAD] is based failed to identify a NOAEL. In light of this data gap, the necessity of a reliance on a LOAEL to calculate the RfD/PAD, and the quantitative and qualitative evidence of increased susceptibility of the young discussed above, EPA is raising the 10X FQPA safety factor to the value of 30X.

E. Aggregate Risks and Determination of Safety

Safety is assessed for acute and chronic risks by comparing aggregate exposure to the pesticide to the aPAD and cPAD. The aPAD and cPAD are calculated by dividing the LOC by all applicable UFs. For linear cancer risks, EPA calculates the probability of additional cancer cases given aggregate exposure. Short-, intermediate-, and long-term risks are evaluated by comparing aggregate exposure to the LOC to ensure that the MOE called for by the product of all applicable UFs is not exceeded.

1. *Acute risk*. There were no effects observed in oral toxicity studies including developmental toxicity studies in rats and rabbits that could be attributable to a single dose (exposure). Therefore, mesotrione is not expected to pose an acute risk.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to mesotrione from food and water will utilize 52% of the cPAD for the population group (All Infants (<1 year old)). There are no residential uses for mesotrione that result in chronic residential exposure to mesotrione.

3. *Short-term risk*. Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Mesotrione is currently registered for use on golf course turf grass that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term exposures for mesotrione. Post-application inhalation exposure is not expected and was not included in the risk estimates. No incidental oral exposure expected to adults or youth from residues on treated golf course grass. A summary of the assumptions for post application dermal exposure to golfers from mesotrione use on turf grass use and the risk assessment can be found at *http://www.regulations.gov* in document ''Petition#: 6F7162. Mesotrione: Human Health Risk Assessment for Proposed Section 3 New Uses on Asparagus, Grasses Grown for Seed, Oats, Okra, Rhubarb, Sugarcane, Grain Sorghum, Sweet Sorghum and Turf (Golf Course and Sod Farms)'' at page 27 in docket ID number EPA–HQ–OPP–2006–0030.

EPA has concluded that food, water, and post application golf course turf exposures result in aggregate MOEs of 12,000 for Adults 20-49 years old and 12,000 for Youth 13-19 years old. Both do not exceed the Level of Concern MOE of 3,000 for mesotrione.

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

Though residential exposure could occur application to golf course turf is not expected to result in residential post-application exposure of more than 30 days duration. Therefore, the Agency has determined that it is not appropriate to aggregate chronic food and water and intermediate-term exposures for mesotrione.

5. *Aggregate cancer risk for U.S. population*. Mesotrione is classified as a ''not likely'' to be carcinogenic in humans based on the results of a carcinogenicity study in mice and the combined chronic toxicity and carcinogenicity study in the rat. Therefore, mesotrione is not expected to pose a cancer risk to humans.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (high-pressure liquid chromatography fluorescence detector [HPLC/FLD]) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental

Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are no CODEX, Canadian, or Mexican tolerances/Maximum Residue Levels for mesotrione residues for the proposed crops.

V. Conclusion

Therefore, the tolerance is established for residues of mesotrione, 2-[4-(methylsulfonyl)-2-nitrobenzoyl]-1,3-cyclohexanedione, in or on asparagus at 0.01 ppm; grass, seed screenings at 0.10 ppm; grass, straw at 0.10 ppm; grass, forage at 0.01 ppm; grass, hay at 0.01 ppm; oat, grain at 0.01 ppm; oat, straw at 0.01 ppm; oat, forage at 0.01 ppm; oat, hay at 0.01 ppm; okra at 0.01 ppm; rhubarb at 0.01 ppm; sorghum, grain, forage at 0.01 ppm; sorghum, grain, grain at 0.01 ppm; sorghum, grain, stover at 0.01 ppm; sorghum, sweet at 0.01 ppm and sugarcane, cane at 0.01 ppm.

VI. Statutory and Executive Order Reviews

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

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

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000) do not apply to this rule. In addition, This rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: February 7, 2008.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.571 is amended by alphabetically adding the following commodities in the table in paragraph (a) to read as follows:

§ 180.571 Mesotrione; tolerances for residues.

* * * * *

Commodity	Parts per million
Asparagus	0.01
* * *	* *
Grass, seed screenings	0.10
Grass, straw	0.10
Grass, forage	0.01
Grass, hay	0.01
* * *	* *
Oat, grain	0.01
Oat, straw	0.01
Oat, forage	0.01
Oat, hay	0.01
Okra	0.01
Rhubarb	0.01
Sorghum, grain, forage	0.01
Sorghum, grain, grain	0.01
Sorghum, grain, stover	0.01
Sorghum, sweet	0.01
Sugarcane, cane	0.01

* * * * *

[FR Doc. E8–3123 Filed 2–19–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0916; FRL–8343–6]

Formetanate Hydrochloride; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues of formetanate hydrochloride, *m*-[[(dimethylamino)methylene]amino]phenyl methylcarbamate hydrochloride, in or on dry bulb onions. This action is in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on dry bulb onions. This regulation establishes a maximum permissible level for residues of formetanate hydrochloride in this food commodity. The tolerance expires and is revoked on December 31, 2008.

DATES: This regulation is effective February 20, 2008. Objections and requests for hearings must be received on or before April 21, 2008, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**.

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0916. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Andrew Ertman, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308-9367; e-mail address: *ertman.andrew@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

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

C. Can I File an Objection or Hearing Request?

Under section 408(g) of the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2006–0916 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before April 21, 2008.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2006–0916., by one of the following methods:

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

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(e) and 408 (l)(6) of FFDCA, 21 U.S.C. 346a, is establishing a tolerance for residues of the insecticide formetanate hydrochloride, *m*-[[(dimethylamino) methylene]amino]phenyl methylcarbamate hydrochloride, in or on onions, dry bulb at 0.02 parts per million (ppm). This tolerance expires and is revoked on December 31, 2008. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the CFR.

Section 408(l)(6) of FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18 related tolerances

to set binding precedents for the application of section 408 of FFDCA to other tolerances and exemptions. Section 408(e) of FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, i.e., without having received any petition from an outside party.

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

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that ''emergency conditions exist which require such exemption.'' This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

III. Emergency Exemption for Formetanate Hydrochloride on Dry Bulb Onions and FFDCA Tolerances

The states of Idaho, Oregon, Colorado, Michigan, Ohio, Wisconsin, Texas and New York requested the use of formetanate hydrochloride, formulated as the product Carzol, on dry bulb onions to control thrips. According to these states, the available registered alternatives were not providing adequate control of this pest and without the use of Carzol, growers would suffer significant economic losses. After having reviewed the submissions, EPA concurred that emergency conditions exist and authorized under FIFRA section 18 the use of formetanate hydrochloride on dry bulb onions for control of thrips in Idaho, Oregon, Colorado, Michigan, Ohio, Wisconsin, Texas and New York.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of formetanate hydrochloride in or on dry bulb onions. In doing so, EPA considered the safety standard in section 408(b)(2) of FFDCA, and EPA decided that the necessary tolerance under section 408(l)(6) of FFDCA would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment as provided in section 408(l)(6) of FFDCA. Although this tolerance expires and is revoked on December 31, 2008, under section 408(l)(5) of FFDCA, residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on dry bulb onions after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by this tolerance at the time of that application. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this tolerance is being approved under emergency conditions, EPA has not made any decisions about whether formetanate hydrochloride meets EPA's registration requirements for use on dry bulb onions or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this tolerance serves as a basis for registration of formetanate hydrochloride by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for persons in any State other than Idaho, Oregon, Colorado, Michigan, Ohio, Wisconsin, Texas and New York to use this pesticide on this crop under section 18 of FIFRA. For additional information regarding the emergency exemption for formetanate hydrochloride, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT**.

IV. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of FFDCA and a complete description of the risk assessment process, see *http://www.epa.gov/fedrgstr/EPA-PEST/1997/November/Day-26/p30948.htm*.

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of formetanate hydrochloride and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for a time-limited tolerance for residues of formetanate hydrochloride in or on onions, dry bulb at 0.02 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows. In addition, an Interim Reregistration Eligibility Decision (IRED) Document was published in March 2006. This IRED was proposed to become a final RED in the *N*-methyl Carbamate Revised Cumulative Risk Assessment that was made available for public comment on September 26, 2007. This IRED/RED provides additional information and more detail on the dietary exposures and risks associated with formetanate hydrochloride. The link for this document on the EPA website is: *http://www.epa.gov/oppsrrd1/REDs/formetanatehcl__ired.pdf*.

A. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological endpoint. However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intraspecies differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute population Adjusted Dose (aPAD) is a modification of the RfD to accommodate this type of FQPA SF.

For non-dietary risk assessments (other than cancer) the UF is used to

determine the level of concern (LOC). For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1 x 10^6 or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a ''point of departure'' is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for formetanate hydrochloride used for human risk assessment is shown in the following Table. In addition, as noted above in Unit IV., a detailed summary of the toxicological endpoints can be found in the Formetanate Hydrochloride IRED (which, as noted previously, is now proposed to become a final RED) (*http://www.epa.gov/oppsrrd1/REDs/formetanatehcl_ired.pdf*).

TABLE 1.—SUMMARY OF TOXICOLOGICAL ENDPOINTS AND DOSES FOR FORMETANATE HYDROCHLORIDE DIETARY RISK ASSESSMENTS

Exposure Scenario	Dose UF/MOE	Hazard Based FQPA Safety Factor	Endpoint for Risk Assessment
Acute Dietary females 13-50 years of age	Not applicable; the endpoint selected for the general population (see below) based on, and therefore protective of, this population subgroup.		
Acute Dietary general population	$BMDL^1_{10}$ = 0.065 mg/kg UF = 100 (a) aRfD = 0.00065 mg/kg	1X Acute PAD = 0.00065 mg/kg.	$BMDL_{10}$ for female pup brain AChE in the Comparative ChE study.
Chronic Dietary	Not applicable; data on formetanate hydrochloride indicate that the magnitude of cholinesterase inhibition (ChEI) does not increase with continued exposure because of the rapid reversibility of ChEI. Therefore, chronic exposure to formetanate hydrochloride may be considered as a series of acute exposures.		
Incidental Oral Short and intermediate terms	Not applicable. There are no current registrations for residential uses.		
Cancer	Group E Carcinogen; Classification: "Not likely."		

B. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.276) for the residues of formetanate hydrochloride, in or on a variety of raw agricultural commodities. Risk assessments were conducted by EPA to assess dietary exposures from formetanate hydrochloride in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. A tier 3, acute probabilistic dietary risk assessment was conducted using the Dietary Exposure Evaluation Model (DEEM-FCID, Version 2.03), which uses food consumption data from the USDA's Continuing Surveys of Food Intakes by Individuals (CSFII) from 1994-1996 and 1998. Drinking water exposure was incorporated directly into the dietary exposure analysis. The dietary assessment relies on Pesticide Data Program (PDP) monitoring data from 2001 for oranges, grapefruit and pears. Anticipated residues for apples are derived using field trial data, since the PDP data reflect the late-season use on apples, which is no longer being supported by the registrant. Field trial residue data were submitted with the exemption request for both peeled and unpeeled onions. Since onions are generally peeled prior to eating, the peeled onion data were used in this assessment. No adjustment was made to account for the percent of onions treated (i.e., 100% crop treated was assumed).

ii. *Chronic exposure.* Cholinesterase inhibition (ChEI) is the only manifestation of exposure to formetanate HCl observed in the variety of toxicity studies conducted to support reregistration of this active ingredient. These formetanate HCl studies indicate that the magnitude of cholinesterase inhibition (ChEI) does not increase with continued exposure because of the rapid reversibility of ChEI. Therefore, chronic exposure to formetanate HCl may be considered as a series of acute exposures, indicating that a chronic dietary exposure assessment is not necessary.

iii. *Cancer.* Formetanate hydrochloride is classified as a group ''E'' carcinogen, and therefore a cancer exposure assessment is not required.

iv. *Anticipated residue and percent crop treated (PCT) information.* Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must pursuant to FFDCA section 408(f)(1) require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. For the present action, EPA will issue such data call-ins for information relating to anticipated residues as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Such data call-ins will be required to be submitted no later than 5 years from the date of issuance of this tolerance.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a

comprehensive dietary exposure analysis and risk assessment for formetanate hydrochloride in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of formetanate hydrochloride. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm*.

Tier II screening models, Pesticide Root Zone Model and Exposure Analysis Modeling System (PRZM and EXAMS) with the Index Reservoir and Percent Cropped Area adjustment (IR-PCA PRZM/EXAMS) were used to determine estimated surface water concentrations of formetanate HCL following application to apples in North Carolina, Pennsylvania and Oregon. As noted in previous sections of this document, additional detailed information regarding formetanate hydrochloride, including dietary exposure from drinking water can be found in the March 2006 IRED (*http://www.epa.gov/oppsrrd1/REDs/formetanatehcl_ired.pdf*).

Based on the PRZM/EXAMS model described above, the highest estimated environmental concentration (EEC) of formetanate hydrochloride for acute exposures is estimated to be 7.7 parts per billion (ppb) for surface water based on applications to apples in North Carolina.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model (DEEM-FCID™, Version 2.03). For the acute dietary risk assessment, the entire distribution of estimated daily exposure values from the PRZM-EXAMS run was used probabilistically in the analysis to assess the contribution to drinking water.

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

Formetanate hydrochloride is not registered for use on any sites that would result in residential exposure.

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

Formetanate hydrochloride belongs to the *N*-methyl carbamate class of chemicals for which a revised cumulative assessment has recently (72 FR 54656, September 26, 2007) been published by the Agency in the **Federal Register** for comment (*http://www.epa.gov/oppsrrd1/REDs/nmc_revised_cra.pdf*). This ''Revised *N*-Methyl Carbamate Cumulative Risk Assessment'' concludes that the cumulative risks from food, water, and residential exposure to *N*-methyl carbamates do not exceed the Agency's level of concern.

Field trial data for formetanate hydrochloride residues on peeled onion (the value used in dietary risk assessment) are below the LOD of 0.0007 ppm. Field trial data are much more conservative (often 1 to 2 orders of magnitude higher in residue) than the PDP data generally used for registered uses in the cumulative assessment. Using residue values at half the LOQ of 0.002 ppm had negligible impact on dietary risk for formetanate hydrochloride in the *N*-methyl carbamate cumulative assessment. Furthermore, food derived from onion is not a significant contributor to the diet of infants less than 1 year old (the most sensitive subpopulation in the *N*-methyl carbamate cumulative assessment).

If a tolerance were currently in place for formetanate hydrochloride use on onion, it would be among the ''Insignificant Contributors'' that, in their entirety, account for only 3% of the total risk in the *N*-methyl carbamate ''risk cup.'' These ''Insignificant Contributors'' had their tolerances fully reassessed on June 29, 2006 prior to completion of the full *N*-methyl carbamate cumulative assessment. See *http://www.epa.gov/pesticides/cumulative/carbamates_commodity.pdf*.

In light of these residue findings for formetanate hydrochloride on onion, the Agency does not expect any significant contribution of exposure to the cumulative assessment and therefore, the conclusions from the revised cumulative risk assessment for the *N*-methyl carbamates remain unaffected by this emergency use on onions.

C. Safety Factor for Infants and Children

1. *In general*. Section 408 of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

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

3. *Conclusion*. There is a complete toxicity database for formetanate hydrochloride and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. The Agency determined that the FQPA Safety Factor can be removed (reduced to 1X) due to lack of concern and no residual uncertainties for prenatal and/or postnatal toxicity. Due to the conservative, health-protective nature of the models and the input parameters, EPA believes exposure via drinking water will not be underestimated. Therefore, the current hazard and exposure data support reducing the FQPA Safety Factor to 1X. Additional information may be found in the March 2006 IRED (*http://www.epa.gov/oppsrrd1/REDs/formetanatehcl_ired.pdf*)

D. Aggregate Risks and Determination of Safety

The Agency currently has two ways to estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses. First, a screening assessment can be used, in which the Agency calculates drinking water levels of comparison (DWLOCs) which are used as a point of comparison against estimated drinking water concentrations (EDWCs). The DWLOC values are not regulatory standards for drinking water, but are theoretical upper limits on the concentration of a pesticide in drinking water that can be considered safe in light of total aggregate exposure to a pesticide in food and residential uses. More information on the use of DWLOCs in dietary aggregate risk assessments can be found at *http://www.epa.gov/oppfead1/trac/science/screeningsop.pdf*.

More recently the Agency has used another approach to estimate aggregate exposure through food, residential and drinking water pathways. In this approach, modeled surface and ground water EDWCs are directly incorporated into the dietary exposure analysis, along with food. This provides a more realistic

estimate of exposure because actual body weights and water consumption from the CSFII are used. The combined food and water exposures are then added to estimated exposure from residential sources to calculate aggregate risks. The resulting exposure and risk estimates are still considered to be high end, due to the assumptions used in developing drinking water modeling inputs. The risk assessment for formetanate hydrochloride used in this tolerance document uses this approach of incorporating water exposure directly into the dietary exposure analysis.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to formetanate hydrochloride will occupy 36% of the aPAD for the U.S. population, 29% of the aPAD for females 13 years and older, 117% of the aPAD for all infants less than 1 year old and 69% of the aPAD for children 1 to 2 years old.

These risk estimates are based on upper-end (99.9th percentile) exposure estimates for each population. The 99.9th percentile is used ''in the first instance'' in estimating exposure for probabilistic acute dietary exposure assessments which are based on highly refined exposure inputs. EPA evaluates whether to vary from use of the 99.9th percentile in assessing exposure based on considerations primarily related to the conservativeness or lack thereof of the various inputs to the assessment, with particular emphasis on an examination of the conservativeness of those inputs that most greatly influence the risk estimate. There are several inputs to the current assessment that are quite conservative. First, anticipated residue data for apples is based on field trial data as opposed to PDP data; this is likely to substantially overstate residue levels in apples as consumed. Second, EPA assumed that 100% of the onion crop will be treated with formetanate. Actual percent crop treated is likely to be substantially lower than that, if for no other reason than use is only permitted in a few States. Third, and most important, the estimated residue levels in water are very conservative compared to the refined food estimates that generally cause EPA to rely on the 99.9th percentile. This is particularly critical because the estimated dietary exposure from drinking water is the principal driver of the risk assessment, accounting for 106% of the aPAD for infants when considered alone.

The drinking water exposure estimates were based on PRZM-EXAMS surface water modeling results. The PRZM-EXAMS model is intended to provide upper-end estimates of pesticide residues in surface water. The models use an Index Reservoir based on an actual drinking water reservoir in Illinois (Shipman City Lake) that is known to be vulnerable to pesticide contamination. Pesticide loadings to the water body are modeled using local soils and weather data to reflect crop-specific scenarios around the country. The conservativeness of this model and its tendency to overestimate residues was documented by EPA in an earlier tolerance proceeding. (69 FR 30042, 30060-30063, May 26, 2004). Additionally, there are pesticide-specific factors here that insure that PRZM-EXAMS modeling results will overestimate residue levels in drinking water.

The modeling results were adjusted by a Percent Cropped Area (PCA) factor of 0.87. In other words, the results assume that 87% of the watershed is cropped in apples (or other crops with similar use of formetanate) and that 100% of these crops are treated with formetanate HCl. The PCA factor does not consider the percent of the crop that is actually treated because detailed pesticide usage data (i.e., at the state or watershed level) are generally unavailable or inadequate. In the case of formetanate HCl, however, the national usage estimates suggest that a PCA factor of 0.87 significantly overestimates drinking water concentrations in many areas. Maximum percent crop treated (PCT) estimates for apple, pear, peach, orange and grapefruit are 5% or less, and maximum PCT estimates for lemon/lime and nectarine are 15% and 46%, respectively. Thus, while it is theoretically possible there could be water basins in the United States that are planted almost entirely with crops that may lawfully be treated with formetanate HCl and that all crops in that water basin would be treated with formetanate HCl, the probability of these two unlikely events occurring together is very low.

Accordingly, it is EPA's judgment that use of the 99.9th percentile to estimate exposure significantly overstates exposure and thus the estimated slight exceedance of the aPAD (117%) for infants does not show a risk of concern. This is confirmed by the fact the estimated exposure for this population group declines below the aPAD at the 99.86th percentile level.

2. *Chronic risk.* As noted in Unit IV.B.1.ii. of this preamble, cholinesterase inhibition (ChEI) is the only manifestation of exposure to formetanate hydrochloride observed in the variety of toxicity studies conducted to support reregistration of this active ingredient. These formetanate hydrochloride studies indicate that the magnitude of cholinesterase inhibition (ChEI) does not increase with continued exposure because of the rapid reversibility of ChEI. Therefore, chronic exposure to formetanate hydrochloride may be considered as a series of acute exposures, indicating that a chronic dietary risk assessment is not necessary. Inasmuch as EPA has concluded that there is no acute risk of concern, chronic risk is also not of concern.

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

Formetanate hydrochloride is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the chronic risk from food and water, which was previously addressed and is not of concern.

4. *Aggregate cancer risk for U.S. population.* Formetanate hydrochloride is classified as a group ''E'' carcinogen and is therefore not expected to pose a cancer risk.

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

V. Other Considerations

A. Analytical Enforcement Methodology

An adequate method is available for enforcement of the currently established plant tolerances Gas Chromatography with Electron Capture Detection (GC/ECD method (Method I); PAM Vol. II). For purposes of the Section 18 emergency exemption, EPA concludes that this method is sufficient to enforce the recommended onion tolerance.

B. International Residue Limits

There are no CODEX residue limits for residues of formetanate hydrochloride on onions, therefore, harmonization is not an issue.

VI. Conclusion

Therefore, a time-limited tolerance is established for residues of formetanate hydrochloride; *m*-[[(dimethylamino) methylene]amino]phenyl methylcarbamate hydrochloride in or on onion, dry bulb at 0.02 ppm. This time-limited tolerance expires and is revoked on December 31, 2008.

VII. Statutory and Executive Order Reviews

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

Since tolerances and exemptions that are established on the basis of a FIFRA section 18 exemption under section 408 of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000) do not apply to this rule. In addition, This rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

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

VIII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: February 6, 2008.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.276 is amended by adding text to paragraph (b) to reads as follows:

§ 180.276 Formetanate hydrochloride; tolerances for residues.

* * * * *

(b) *Section 18 emergency exemptions.* A time-limited tolerance is established for residues of the insecticide formetanate hydrochloride (*m*-[[(dimethylamino) methylene]amino]phenyl methylcarbamate hydrochloride) in connection with use of the pesticide under section 18 emergency exemptions granted by EPA. The tolerances in this paragraph will expire and are revoked on the date specified in the following table.

Commodity	Parts per million	Expiration/revocation date
Onion, dry bulb	0.02	12/31/08

* * * * *

[FR Doc. E8–2906 Filed 2–19–08; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 102–118

[FMR Amendment 2008–04; FMR Case 2007–102–4; Docket 2008–0001; Sequence 1]

RIN 3090–AI41

Federal Management Regulation; FMR Case 2007–102–4, Transportation Payment and Audit; Refund of Expired, Unused Tickets

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Interim final rule.

SUMMARY: The General Services Administration is amending the Federal Management Regulation (FMR) pertaining to unused tickets. The section is being deleted that was published without a public comment period.

DATES: This final rule is effective on: February 20, 2008.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Ted J. Bembenek, Jr., at (202) 208–7629. The Regulatory Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. Please cite FMR Case 2007–102–4, Amendment 2008–04.

SUPPLEMENTARY INFORMATION:

A. Background

GSA published § 102–118.196 in the **Federal Register** at 69 FR 57619, September 24, 2004, as an addition to part 118 of Title 41 (41 CFR part 118). The amendment was published as a final rule without a comment period and required that Transportation Service Providers (TSPs) refund the value of expired, unused tickets to GSA's Audit Division when a ticket purchasing agency fails to notify the TSP of a cancellation.

Since its publication, GSA has received feedback from sources who wanted to offer comments at the time the rule was originally published. After receipt of contacts from these sources,

GSA agreed to remove this specific provision in its current form.

In order to accomplish this, it is necessary to remove the existing provision, and this FMR does so.

B. Executive Order 12866

This regulation is excepted from the definition of ''regulation'' or ''rule'' under Section 3(d)(3) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993 and, therefore, was not subject to review under Section 6(b) of that Executive Order.

C. Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for notice and comment as per the exemption specified in 5 U.S.C. 553(a)(2); therefore, the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* does not apply.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FMR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This final rule is exempt from Congressional review under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Part 102–118

Accounting, Claims, Reporting and recordkeeping requirements, Transportation.

Dated: October 22, 2007.

Lurita Doan,

Administrator of General Services.

■ For the reasons set forth in the preamble, GSA amends 41 CFR part 102–118 as set forth below:

PART 102–118—TRANSPORTATION PAYMENT AND AUDIT

■ 1. The authority citation for 41 CFR part 102–118 continues to read as follows:

Authority: 31 U.S.C. 3726; and 40 U.S.C. 121(c), and 49 U.S.C. 10721, 13712, and 15504.

§ 102–118.196 [Removed]

■ 2. Remove § 102–118.196.

[FR Doc. E8–3101 Filed 2–19–08; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 385 and 395

[Docket No. FMCSA–2004–19608]

RIN–2126–AB14

Hours of Service of Drivers

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Interim final rule (IFR); extension of comment period.

SUMMARY: FMCSA extends the comment period for the Hours of Service of Drivers interim final rule published on December 17, 2007, for 30 days. The FMCSA received a request to extend the comment period from the Advocates for Highway and Auto Safety on February 7, 2008. The extension of the comment period will allow all interested parties additional time to submit comments to the interim final rule.

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

ADDRESSES: You may submit comments identified by Federal Docket Management System Number FMCSA–2004–19608 by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the instructions for submitting comments on the Federal electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.
- *Hand Delivery:* Ground Floor, Room W12–140, DOT Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading below. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to the ground floor, room W12–140, DOT Building, New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://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 obtain 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 the Agency to notify you that your comments were received, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

Comments received after the comment closing date will be included in the docket, and we will consider late comments to the extent practicable. FMCSA may, however, issue a final rule at any time after the close of the comment period.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Yager, Driver and Carrier Operations; or *MCPSD@dot.gov.* Telephone (202) 366–4325. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: On February 7, 2008, the Advocates for Highway and Auto Safety (Advocates) sent a request on behalf of themselves, Public Citizen, the Truck Safety Coalition, and the International Brotherhood of Teamsters for an extension of the comment period in the subject rulemaking proceeding. They stated that the complexity of the issues involved, including the new analyses provided in the interim final rule, has required serious evaluation that has taken up much of its limited staff time. The Advocates requested a 30-day extension of the comment period which they believe would be in the public interest and would not prevent the Agency from issuing a final rule in 2008.

In order to allow petitioners and the general public an opportunity to provide comprehensive comments on the new analyses included in the

interim final rule published by the Federal Motor Carrier Safety Administration on December 17, 2007, the Agency has decided to grant the petitioner's request to extend the comment period for the rulemaking by 30 days. The comment period has been extended and comments must be received on or before March 17, 2008.

Issued: February 13, 2008.

John H. Hill,

Administrator.

[FR Doc. E8–3073 Filed 2–19–08; 8:45 am]

BILLING CODE 4910–EX–P

Proposed Rules

Federal Register
Vol. 73, No. 34
Wednesday, February 20, 2008

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0181; Directorate Identifier 2007–NM–180–AD]

RIN 2120–AA64

Airworthiness Directives; Lockheed Model L–1011 Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Lockheed Model L–1011 series airplanes. This proposed AD would require revising the FAA-approved maintenance program by incorporating new airworthiness limitations for fuel tank systems to satisfy Special Federal Aviation Regulation No. 88 requirements. This proposed AD would also require the accomplishment of certain fuel system modifications, the initial inspections of certain repetitive fuel system limitations to phase in those inspections, and repair if necessary. This proposed AD results from a design review of the fuel tank systems. We are proposing this AD to prevent the potential for ignition sources inside fuel tanks caused by latent failures, alterations, repairs, or maintenance actions, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

DATES: We must receive comments on this proposed AD by March 21, 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.

For service information identified in this AD, contact Lockheed Continued Airworthiness Project Office, Attention: Airworthiness, 86 South Cobb Drive, Marietta, Georgia 30063–0567.

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 proposed 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: Robert A. Bosak, Aerospace Engineer, Propulsion and Services Branch, ACE–118A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone (770) 703–6094; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0181; Directorate Identifier 2007–NM–180–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed 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 proposed AD.

Discussion

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled ''Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements'' (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 (''SFAR 88,'' Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (i.e., type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: Single failures, single failures in combination with a latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

We have determined that the actions identified in this proposed AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Relevant Service Information

We have reviewed Lockheed Service Bulletin 093–28–098, Revision 1, dated January 22, 2008. The service bulletin describes procedures for incorporating new airworthiness limitations for fuel tank systems into the operator's FAA-approved maintenance program. The airworthiness limitations for fuel tank systems include fuel system limitations (FSLs) and critical design configuration control limitations (CDCCLs). FSLs are modifications, design features, and periodic inspections of certain features for latent failures that could contribute to an ignition source. CDCCLs are limitation requirements to preserve a critical ignition source prevention feature of the fuel tank system design that is necessary to prevent the occurrence of an unsafe condition. The purpose of a CDCCL is to provide instruction to retain the critical ignition source prevention feature during configuration change that may be caused by alterations, repairs, or maintenance actions. A CDCCL is not a periodic inspection.

Lockheed Service Bulletin 093–28–098 refers to the following service information for doing certain CDCCLs:

- Hamilton Sundstrand Overhaul Manual 28–24–03, Revision 14, dated May 15, 2000, or later, for overhauling and repairing the electrically-operated fuel boost pumps.
- Lockheed L–1011 Service Information Letter 28–12 for keeping the electrical conduit for the electrically-operated fuel boost pumps open and unplugged at the wing rear spar.
- Lockheed Drawing 1527514 for installing the fuel tank valves, auxiliary power unit pump, sight gages, fuel quantity indicating system tank units, over wing filler cap adapter ring, boost pump mounting plate, and access doors for the boost pump, vent box, vent valve, and fuel level control switch.
- Lockheed Service Bulletin 093–28–098 also refers to the following service bulletins as additional sources of service information for doing the FSLs:
- Lockheed Service Bulletin 093–28–062, Revision 7, dated December 9, 1983, for Model L–1011 series airplanes, which describes procedures for inspecting and modifying the plug-in valve assemblies of the fuel shutoff system.
- Lockheed Service Bulletin 093–28–089, Revision 3, dated October 4, 2006, for Model L–1011–385–3 series airplanes, which describes procedures for removing auxiliary fuel tank No. 4.
- Lockheed Service Bulletin 093–28–093, Revision 1, dated February 8, 1999, for Model L–1011 series airplanes, which describes procedures for installing and inspecting fuel boost pumps and modifying the centrifugal pump and motor.
- Lockheed Service Bulletin 093–28–094, Revision 1, dated June 23, 2006, for Model L–1011 series airplanes. This service bulletin describes procedures for (1) modifying the wiring harnesses of the fuel level control switch, (2) repetitively inspecting the fuel level control switch, wiring harnesses, and harness conduit for any visible damage, wear or chafing, broken or missing O-rings, or indications of electrical arcing, (3) replacing the fuel level control switch assembly with a new assembly if any damage, wear or chafing, or indications of electrical arcing to the wiring is found or any broken or missing O-rings are found, (4) notifying Lockheed of any discrepancies found during the inspection, and (5) revising the airplane records and maintenance planning documents to require the repetitive inspections. The modification involves replacing the braided fiberglass sleeving with PVC electrical sleeving over each wiring harness and replacing the smaller inside diameter conduit with the larger inside diameter conduit, if applicable. (Although AD 2001–08–21, amendment 39–12198 (66 FR 21072, April 27, 2001) mandated accomplishment of Lockheed Service Bulletin 093–28–094, dated March 3, 2000, more work is necessary for Revision 1 of Lockheed Service Bulletin 093–28–094.)
- Lockheed Service Bulletin 093–28–095, dated September 13, 2006, for Model L–1011 series airplanes. This service bulletin describes procedures for (1) repetitively inspecting the airplane fuel tanks and vent boxes for cleanliness and evidence of deteriorated or damaged fuel/vent tubes and components, (2) repetitively inspecting bonding jumpers on the fuel/vent tubes and components for proper installation, corrosion, frayed or broken strands, and the condition of the environmental sealing or bonding clamps and hardware, (3) correcting any discrepant conditions, (4) notifying Lockheed of any discrepancies found during the inspection, (5) adding about 444 bonding jumpers across the fuel/vent tube fittings located in fuel tanks 1, 2L, 2R, and 3, (6) repetitively inspecting the bonding jumpers on the fuel/vent tube fittings, and (7) revising the airplane records and maintenance planning documents to require the repetitive inspections.
- Lockheed Service Bulletin 093–28–096, Revision 2, dated June 23, 2006, for Model L–1011 series airplanes. This service bulletin describes procedures for (1) repetitively inspecting the wiring harnesses of the No. 1 and No. 3 engine tank valves for evidence of damage and fuel contamination, (2) replacing any damaged wire with new wire, (3) repairing or replacing any contaminated wires as applicable, (4) reporting any evidence of damage or wire replacement to Lockheed, and (5) revising the airplane records and maintenance planning documents to require the repetitive inspections.
- Lockheed Service Bulletin 093–28–097, dated August 3, 2006, for Model L–1011 series airplanes. This service bulletin describes procedures for (1) installing identification markers or sleeving on the wiring harnesses of the fuel quantity indicating system (FQIS), (2) repetitively inspecting the FQIS wiring harnesses for any visible damage, wear, chafing, or indications of electrical arcing, (3) replacing or repairing any damaged wires, (4) notifying Lockheed of any discrepancies found during the inspection, and (5) revising the airplane records and maintenance planning documents to require the repetitive inspection.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Findings

During the SFAR 88 safety assessment, Lockheed concluded that no operator had installed auxiliary fuel tank No. 4, in accordance with Lockheed Service Bulletin 093–28–089, on Model L–1011–385–3 series airplanes. Thus, safety assessments for the auxiliary fuel tank, including the electrical equipment involved with the modification, did not need to be analyzed to show compliance with SFAR 88. Since Lockheed has not provided the service information required under SFAR 88 that could lead the FAA to make a finding of compliance, and there is a possibility that there may be unreported installations of the modification, we must mandate the removal of auxiliary fuel tank.

If an operator does not wish to remove the auxiliary fuel tank, we will consider requests for alternative methods of compliance (AMOCs). The most likely requests would be to allow continued use of the tank by showing compliance

with SFAR 88. This would involve obtaining STCs and developing design and maintenance procedures to address all identified safety issues.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. For this reason, we are proposing this AD, which would require revising the FAA-approved maintenance program to incorporate the FSLs and CDCCLs specified in Lockheed Service Bulletin 093–28–098. This proposed AD would also require the accomplishment of certain fuel system modifications, the initial inspections of certain repetitive FSLs to phase in those inspections, and repair if necessary.

Differences Between the Proposed AD and Service Bulletin

Lockheed Service Bulletin 093–28–098 specifies to revise the operator's maintenance program to incorporate Revision 7 of Lockheed Service Bulletin 093–28–062 and Revision 1 of Lockheed Service Bulletin 093–28–093. However, this proposed AD would not require those actions, since Lockheed Service Bulletins 093–28–062 and 093–28–093 are mandated by other ADs. AD 99–24–12, amendment 39–11436 (64 FR 66756, November 30, 1999), mandated Revision 1 of Lockheed Service Bulletin 093–28–093. AD 80–25–04, amendment 39–3983 (45 FR 79011, November 28, 1980), mandated Revision 1 of Lockheed Service Bulletin 093–28–062, but this proposed AD would not require accomplishing Revision 7 of the service bulletin since both Revisions 1 and 7 adequately address the unsafe condition.

Where Lockheed Service Bulletin 093–28–098 specifies to inspect, this proposed AD would require a general visual inspection. We have included Note 2 in this proposed AD to define this type of inspection.

Although Lockheed Service Bulletins 093–28–094, 093–28–095, 093–28–096, and 093–28–097 describe procedures for notifying Lockheed of any discrepancies found during inspection or any evidence of damage or wire replacement, this proposed AD would not require those actions.

Explanation of Compliance Time

In most ADs, we adopt a compliance time allowing a specified amount of time after the AD's effective date. In this case, however, the FAA has already issued regulations that require operators to revise their maintenance/inspection programs to address fuel tank safety issues. The compliance date for these regulations is December 16, 2008. To provide for efficient and coordinated implementation of these regulations and this proposed AD, we are using that same compliance date in this proposed AD.

Costs of Compliance

There are about 108 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs, at an average labor rate of $80 per hour, for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Maintenance program revision to incorporate FSLs and CDCCLs	4	None	$320	63	$20,160
Removal of auxiliary fuel tank No. 4, if applicable	40	None	3,200	8	25,600
Modification and inspection of the wiring harnesses of the fuel level control switch.	19	$974	2,494	63	157,122
Inspection of the airplane fuel tanks, vent boxes, and bonding jumpers, and the addition of bonding jumpers to the fuel/vent tube fittings.	370	$18,491	48,091	63	3,029,733
Inspection of the wiring harnesses of the No. 1 and No. 3 engine tank valves	2	$41,785	41,945	63	2,642,535
Identification and inspection of the FQIS wiring harnesses	4	$336	656	63	41,328

Authority for This Rulemaking

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

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

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would 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 the proposed regulation:

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 proposed AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 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 Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

Lockheed: Docket No. FAA–2008–0181; Directorate Identifier 2007–NM–180–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by March 21, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Lockheed Model L–1011 series airplanes, certificated in any category.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance (AMOC) in accordance with paragraph (k) of this AD. The request should include a description of changes to the required inspections that will ensure the continued operational safety of the airplane.

Unsafe Condition

(d) This AD results from a design review of the fuel tank systems. We are issuing this AD to prevent the potential for ignition sources inside fuel tanks caused by latent failures, alterations, repairs, or maintenance actions, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Compliance

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

Service Bulletin Reference

(f) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of Lockheed Service Bulletin 093–28–098, Revision 1, dated January 22, 2008.

Maintenance Program Revision

(g) Before December 16, 2008, revise the FAA-approved maintenance program to incorporate the fuel system limitations (FSLs) specified in paragraph 2.B. of the service bulletin and the critical design configuration control limitations (CDCCLs) specified in paragraph 2.C. of the service bulletin; except as provided by paragraphs (g)(1) and (g)(2) of this AD.

(1) Where the FSLs specify to inspect, this AD would require doing a general visual inspection.

Note 2: For the purposes of this AD, a general visual inspection is: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

(2) For the CDCCLs specified in paragraphs 2.C.(2)(c), 2.C.(2)(d), and 2.C.(15)(a) of the service bulletin, do the applicable actions using a method approved in accordance with the procedures specified in paragraph (k) of this AD. The applicable service information listed in Table 1 of this AD is one approved method.

TABLE 1.—APPROVED METHODS FOR CERTAIN CDCCLS

For the CDCCL identified in the service bulletin in paragraph—	One approved method is—	For—
2.C.(2)(c)	Hamilton Sundstrand Overhaul Manual 28–24–03, Revision 14, dated May 15, 2000.	Overhauling and repairing the electrically-operated fuel boost pumps.
2.C.(2)(d)	Lockheed L–1011 Service Information Letter 28–12, dated March 17, 1998.	Keeping the electrical conduit for the electrically-operated fuel boost pumps open and unplugged at the wing rear spar.
2.C.(15)(a)	Lockheed Drawing 1527514, Revision D, dated November 11, 1981.	Installing the fuel tank valves, auxiliary power unit pump, sight gages, fuel quantity indicating system tank units, over wing filler cap adapter ring, boost pump mounting plate, and access doors for the boost pump, vent box, vent valve, and fuel level control switch.

Initial Accomplishment of FSLs and Repair if Necessary

(h) Before December 16, 2008, do the applicable FSLs specified in paragraphs 2.B.(1)(b), 2.B.(1)(d), 2.B.(1)(e), 2.B.(1)(f), and 2.B.(1)(g) of the service bulletin and repair any discrepancy, in accordance with the service bulletin. Any repair must be done before further flight.

Note 3: The service bulletin refers to the service information listed in Table 2 of this AD as additional sources of service information for doing the FSLs and repair.

TABLE 2.—ADDITIONAL SOURCES OF SERVICE INFORMATION FOR CERTAIN FSLS

The FSL identified in the service bulletin in paragraph—	Refers to Lockheed Service Bulletin—	For—
2.B.(1)(b)	093–28–089, Revision 3, dated October 4, 2006 (or later).	Removing auxiliary fuel tank No. 4, if applicable.
2.B.(1)(d)	093–28–094, Revision 1, dated June 23, 2006 (or later)	Modifying the wiring harnesses of the fuel level control switch; repetitively inspecting the fuel level control switch, wiring harness, and harness conduit for any visible damage, wear or chafing, broken or missing O-rings, or indications of electrical arcing; and replacing the fuel level control switch assembly with a new assembly if any damage or evidence of chafing to the wiring is found.

TABLE 2.—ADDITIONAL SOURCES OF SERVICE INFORMATION FOR CERTAIN FSLS—Continued

The FSL identified in the service bulletin in paragraph—	Refers to Lockheed Service Bulletin—	For—
2.B.(1)(e)	093–28–095, dated September 13, 2006 (or later)	Repetitively inspecting the airplane fuel tanks and vent boxes for cleanliness and evidence of deteriorated or damaged fuel/vent tubes and components; repetitively inspecting bonding jumpers for proper installation, corrosion, frayed or broken strands, and the condition of the environmental sealing or bonding clamps and hardware; correcting any discrepant conditions; adding bonding jumpers to the fuel/vent tube fittings; and repetitively inspecting the bonding jumpers on the fuel/vent tube fittings.
2.B.(1)(f)	093–28–096, Revision 2, dated June 23, 2006 (or later)	Repetitively inspecting the wiring harnesses of the No. 1 and No. 3 engine tank valves for evidence of damage and fuel contamination; replacing any damaged wire with new wire; and repairing or replacing any contaminated wires as applicable.
2.B.(1)(g)	093–28–097, dated August 3, 2006 (or later)	Identifying the wiring harnesses for the fuel quantity indicator system (FQIS); repetitively inspecting the FQIS wiring harnesses for any visible damage, wear, chafing, or indications of electrical arcing; and replacing or repairing any damaged wires as applicable.

No Reporting Requirement

(i) Although Lockheed Service Bulletin 093–28–094, Revision 1, dated June 23, 2006; Lockheed Service Bulletin 093–28–095, dated September 13, 2006; Lockheed Service Bulletin 093–28–096, Revision 2, dated June 23, 2006; and Lockheed Service Bulletin 093–28–097, dated August 3, 2006; specify to notify Lockheed of any discrepancies found during inspection or any evidence of damage or wire replacement, this AD does not require that action.

No Alternative Inspections, Inspection Intervals, or CDCCLs

(j) After accomplishing the actions specified in paragraphs (g) and (h) of this AD, no alternative inspections, inspection intervals, or CDCCLs may be used unless the inspections, intervals, or CDCCLs are part of a later revision of the service bulletin that is approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA; or unless the inspections, intervals, or CDCCLs are approved as an AMOC in accordance with the procedures specified in paragraph (k) of this AD.

Alternative Methods of Compliance (AMOCs)

(k)(1) The Manager, Atlanta ACO, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. 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.

Issued in Renton, Washington, on February 11, 2008.

Stephen P. Boyd,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–2996 Filed 2–19–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–0177; Directorate Identifier 2007–CE–093–AD]

RIN 2120–AA64

Airworthiness Directives; Taylorcraft Models A, B, and F Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Taylorcraft Models A, B, and F series airplanes. This proposed AD would require inspection of the wing strut attach fittings for corrosion or cracks and would require repair or replacement if corrosion or cracks are found. This proposed AD results from data collected from an accident involving a Taylorcraft Model BF12–65 airplane. The wing separated from the airplane after the wing strut attach fitting failed due to corrosion. We are proposing this AD to detect and correct corrosion or cracks in the wing strut attach fittings. This condition, if not corrected, could result in failure of the wing strut attach fittings and lead to wing separation and loss of control.

DATES: We must receive comments on this proposed AD by March 21, 2008.

ADDRESSES: Use one of the following addresses to comment on this proposed AD:

- *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.

For service information identified in this proposed AD, contact Taylorcraft Aviation, LLC, 2124 North Central Avenue, Brownsville, Texas 78521; telephone: 956–986–0700.

FOR FURTHER INFORMATION CONTACT: Andy McAnaul, Aerospace Engineer, 10100 Reunion Place, San Antonio, Texas 78216; telephone: (210) 308–3365; fax: (210) 308–3370.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under the

ADDRESSES section. Include the docket number, ''FAA–2007–0177; Directorate Identifier 2007–CE–093–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light 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 concerning this proposed AD.

Discussion

This proposed AD results from data collected after a double fatality accident involving a Taylorcraft Model BF12–65 airplane near Oregon City, Oregon in July 2007. The fitting was corroded approximately 70 percent through the fracture surface. The airplane's fabric was wrapped around the lugs of the wing strut attach fitting with the ends of the fabric stuffed into the fitting itself. The fabric plugged the drain hole on the bottom of the fitting and prevented water from draining out the front and back ends of the fitting. The fabric also did not allow for easy visual inspection of the exterior and interior of the fitting. In addition to fabric, the drain hole was blocked by other foreign debris as well.

The corrosion or cracking is most likely to occur in the section between where the front and rear lift strut attach fittings are bolted to the fuselage fitting. This condition, if not corrected, could result in failure of the wing strut attach fittings and lead to wing separation and loss of control.

Relevant Service Information

We have reviewed Taylorcraft Aviation, LLC Service Bulletin No. 2007–002, dated November 8, 2007.

The service information describes procedures for inspecting the wing strut attach fitting part number A–A11 for cracks or corrosion and procedures for any required repair or replacement.

FAA's Determination and Requirements of the Proposed AD

We are proposing this AD because we evaluated all information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design. This proposed AD would require inspection of the wing strut attach fitting for cracks and corrosion and repair or replacement if cracks or corrosion are found.

Costs of Compliance

We estimate that this proposed AD would affect 3,119 airplanes in the U.S. registry.

We estimate the following costs to do the proposed inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
2 work-hours × $80 per hour = $160	$0	$160	$499,040

We estimate the following costs to do any necessary replacements that would be required based on the results of the proposed inspection. We have no way of determining the number of airplanes that may need this replacement:

Labor cost per fitting	Parts cost per fitting	Total cost per airplane (for two fittings)
30 work-hours × $80 per hour = $2,400	$200	$5,200

We have no way of determining the number of airplanes that may require repair as a result of the proposed inspection or the extent of repair that may be required.

Authority for This Rulemaking

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

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

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would 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 the proposed regulation:

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 proposed AD and placed it in the AD docket.

Examining the AD Docket

You may examine the AD docket that contains the proposed AD, the regulatory evaluation, any comments received, and other information 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 Docket Office (telephone (800) 647–5527) is located at the street address stated 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, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 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:

Taylorcraft: Docket No. FAA–2007–0177; Directorate Identifier 2007–CE–093–AD.

Comments Due Date

(a) We must receive comments on this airworthiness directive (AD) action by March 21, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all serial numbers of Taylorcraft Models A, BC, BCS12–D, BCS, BC12–D1, BC–65, BCS12–D1, BCS–65, BC12D–85, BC12–65 (Army L–2H), BCS12D–85, BCS12–65, BC12D–4–85, BC12–D, BCS12D–4–85, (Army L–2G) BF, BFS, BF–60, BFS–60, BF–65, BFS–65, (Army L–2K) BF 12–65, BFS–65, BL, BLS, (Army L–2F) BL–65, BLS–65, (Army L–2J) BL12–65, BLS12–65, 19, F19, F21, F21A, F21B, F22, F22A, F22B, and F22C airplanes that are certificated in any category.

Note: This AD applies to all Taylorcraft models listed above, including those models not listed in Taylorcraft Aviation, LLC Service Bulletin No. 2007–002, dated November 8, 2007. If there are any other differences between this AD and the above service bulletin, this AD takes precedence.

Unsafe Condition

(d) This AD results from data collected from an accident involving a Taylorcraft Model BF12–65 airplane. The wing separated from the airplane after the wing strut attach fitting failed due to corrosion. We are proposing this AD to detect and correct corrosion or cracks in the wing strut attach fittings. This condition, if not corrected, could result in failure of the wing strut attach fittings and lead to wing separation and loss of control.

Compliance

(e) To address this problem, you must do the following, unless already done:

(1) Initially inspect the left and right wing lift strut attach fittings, part number (P/N) A–A11, for corrosion or cracking following Taylorcraft Aviation, LLC Service Bulletin No. 2007–002, dated November 8, 2007, using the following compliance times:

(i) *For airplanes that have never been equipped with floats or snow skis:* Within the next 90 days after the effective date of this AD.

(ii) *For airplanes equipped with or that have ever been equipped with floats or snow skis:* Within the next 30 days after the effective date of this AD.

(2) If the airplane is equipped with floats or snow skis at the time of the initial inspection required by paragraph (e)(1) of this AD or at any time after the initial inspection required by paragraph (e)(1) of this AD, you must repeat the inspection required in paragraph (e)(1) of this AD as follows:

If the following exists:	Then:
(i) The airplane is equipped with floats or snow skis at the time of the initial inspection required by paragraph (e)(1) of this AD.	Inspect no later than 48 months following the initial inspection and repetitively inspect thereafter at intervals not to exceed 48 months. Continue these repetitive inspections until removal of floats or snow skis, at which time you must follow paragraph (e)(2)(ii) of this AD.
(ii) You remove floats or snow skis at any time following the initial inspection required by paragraph (e)(1) of this AD.	Inspect no later than 48 months following the last inspection. After the inspection following removal of floats or snow skis, no further inspections are required unless floats or snow skis are re-installed at a later date, at which time you must follow paragraph (e)(2)(iii) of this AD.
(iii) You install floats or snow skis at any time since the initial inspection required by paragraph (e)(1) of this AD.	Inspect no later than 48 months following the last inspection or before further flight after installation of floats or snow skis, whichever occurs later, and repetitively inspect thereafter at intervals not to exceed 48 months. Continue these repetitive inspections until removal of floats or snow skis, at which time you must follow paragraph (e)(2)(ii) of this AD.

(3) If you find cracking or material loss due to corrosion during any of the inspections required in paragraph (e)(1) or (e)(2) of this AD, before further flight, do the following:

(i) Contact Taylorcraft Aviation, LLC at 2124 North Central Avenue, Brownsville, Texas 78521; telephone: 956–986–0700 to obtain an FAA-approved repair scheme or replacement procedure; and

(ii) Repair following the FAA-approved repair scheme or replace the left and/or right wing lift strut attach fitting(s), P/N A–A11, following the replacement procedure.

Alternative Methods of Compliance (AMOCs)

(f) The Manager, Fort Worth Airplane Certification 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: Andy McAnaul, Aerospace Engineer, 10100 Reunion Place, San Antonio, Texas 78216; telephone: (210) 308–3365; fax: (210) 308–3370. 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.

Related Information

(g) To get copies of the service information referenced in this AD, contact Taylorcraft Aviation, LLC, 2124 North Central Avenue, Brownsville, Texas 78521; telephone: 956–986–0700. To view the AD docket, go to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, or on the Internet at *http://www.regulations.gov.*

Issued in Kansas City, Missouri, on February 12, 2008.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–2995 Filed 2–19–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2008–0110; Airspace Docket No. 07–ASW–8]

RIN 2120–AA66

Proposed Modification of Restricted Areas R–4401A, R–4401B, and R–4401C; Camp Shelby, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes a minor expansion of Restricted Areas R–4401A, B, and C, Camp Shelby, MS, by moving the southeastern corner of the areas approximately two nautical miles to the

east of the current position. This change would ensure that aircraft conducting high altitude munitions delivery training at Camp Shelby remain within the confines of restricted airspace.

DATES: Comments must be received on or before April 7, 2008.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Management Facility, Docket Operations, M–30, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; *telephone:* (202) 366–9826. You must identify FAA Docket No. FAA–2008–0110 and Airspace Docket No. 07–ASW–8, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Rules Group, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; *telephone:* (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2008–0110 and Airspace Docket No. 07–ASW–8) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov*.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2008–0110 and Airspace Docket No. 07–ASW–8.'' The postcard will be date/time stamped and returned to the commenter.

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

Comments on environmental and land use aspects of this proposal may be sent to: Air National Guard Readiness Center, Chief, Environmental Planning Branch, NGB/A7CVP, 3500 Fetchet Avenue, Andrews Air Force Base, MD 20762–5157.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's webpage at *http://www.faa.gov* or the Federal Register's webpage at *http://www.gpoaccess.gov/fr/index.html*.

You may review the public docket containing the proposal, any comments received and any final disposition in person at the Docket Management Facility (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, Federal Aviation Administration, 2601 Meacham Blvd.; Fort Worth, TX 76193–0500.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

Restricted Areas R–4401A, B, and C, at Camp Shelby, MS, share a common boundary and overlie one another to provide restricted airspace, in layers, from ground level up to 29,000 feet MSL. The airspace is used to contain a variety of hazardous activities including air-to-ground live fire operations and ground-based live fire operations. Changes in fighter aircraft tactics have placed emphasis on training for high altitude munitions deliveries. It has been found that the current restricted areas do not provide enough airspace for high altitude delivery maneuvers. As a result, aircraft often spill-out into airspace controlled by Houston Air Route Traffic Control Center during the maneuvers. A minor expansion of the restricted areas on the east side would alleviate this problem.

The Proposal

At the request of the Air National Guard (ANG), the FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 73 to expand the size of Restricted Areas R–4401A, B, and C, at Camp Shelby, MS. The proposed minor modification would expand the restricted areas on the east side by moving the southeast corner of the areas approximately two nautical miles to the east of the current position. This change would provide additional airspace to ensure that aircraft maneuvering for high altitude munitions delivery training would remain within the confines of restricted airspace. The expanded restricted area boundary would extend into the existing De Soto 1 Military Operations Area (MOA), which lies adjacent to R–4401A and B. The De Soto 1 MOA boundary would also be modified to coincide with the revised restricted area boundary.

Section 73.34 of Title 14 CFR part 73 was republished in FAA Order 7400.8N, effective February 16, 2007.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 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.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the

efficient use of airspace. This regulation is within the scope of that authority as it would modify R–4401A, B, and C, Camp Shelby, MS, to provide sufficient restricted airspace to contain hazardous activities.

Related Airspace Proposal

In addition to the proposed restricted area modification described above, the ANG is also requesting the FAA to modify the Military Operations Areas (MOA) associated with the Camp Shelby range. MOAs are not regulatory airspace and, therefore, are not published in 14 CFR part 73. The ANG is requesting additional MOA airspace above the current De Soto 1 and De Soto 2 MOAs, to extend the MOA airspace supporting the range, up to 17,999 feet MSL. The FAA will seek comment on this separate airspace proposal through nonrulemaking procedures.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 73

Airspace, Prohibited areas, Restricted areas.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

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

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

§ 73.44 [Amended]

2. § 73.44 is amended as follows:

* * * * *

R–4401A Camp Shelby, MS [Amended]

By removing the current boundaries and substituting the following:

Boundaries. Beginning at lat. 31°12′55″ N., long. 89°11′03″ W.; to lat. 31°11′49″ N., long. 89°00′00″ W.; to lat. 31°10′16″ N., long. 88°56′34″ W.; to lat. 31°04′37″ N., long. 88°56′34″ W.; to lat. 31°04′37″ N., long. 89°11′00″ W.; to the point of beginning.

* * * * *

R–4401B Camp Shelby, MS [Amended]

By removing the current boundaries and substituting the following:

Boundaries. Beginning at lat. 31°12′55″ N., long. 89°11′03″ W.; to lat. 31°11′49″ N., long. 89°00′00″ W.; to lat. 31°10′16″ N., long. 88°56′34″ W.; to lat. 31°04′37″ N., long. 88°56′34″ W.; to lat. 31°04′37″ N., long. 89°11′00″ W.; to the point of beginning.

* * * * *

R–4401C Camp Shelby, MS [Amended]

By removing the current boundaries and substituting the following:

Boundaries. Beginning at lat. 31°12′55″ N., long. 89°11′03″ W.; to lat. 31°11′49″ N., long. 89°00′00″ W.; to lat. 31°10′16″ N., long. 88°56′34″ W.; to lat. 31°04′37″ N., long. 88°56′34″ W.; to lat. 31°04′37″ N., long. 89°11′00″ W.; to the point of beginning.

* * * * *

Issued in Washington, DC, on February 12, 2008.

Ellen Crum,

Acting Manager, Airspace and Rules Group.

[FR Doc. E8–3138 Filed 2–19–08; 8:45 am]

BILLING CODE 4910–13–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4010

RIN 1212–AB01

Annual Financial and Actuarial Information Reporting; Pension Protection Act of 2006

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend PBGC's regulation on Annual Financial and Actuarial Information Reporting to implement the provisions of the Pension Protection Act of 2006, Public Law 109–280 (''PPA 2006''), which changed the standards for determining which persons are required to report under ERISA section 4010 (Authority to Require Certain Information) and made other changes to the reporting requirements. In addition to providing proposed guidance on implementing the PPA 2006 changes, PBGC is proposing to waive reporting in certain cases for controlled groups with aggregate plan underfunding of $15 million or less, to modify the standards for determining which plans are exempted from the actuarial information requirements, to revise the actuarial information requirements to conform with other PPA 2006 changes, and to provide other clarifications.

DATES: Comments must be submitted on or before April 21, 2008.

ADDRESSES: Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the Web site instructions for submitting comments.
- *E-mail: reg.comments@pbgc.gov.*
- *Fax:* 202–326–4224.
- *Mail or Hand Delivery:* Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026.

All submissions must include the Regulatory Identification Number for this rulemaking (RIN 1212–AB01). Comments received, including personal information provided, will be posted to *http://www.pbgc.gov.* Copies of comments may also be obtained by writing to Disclosure Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, or calling 202–326–4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040.)

FOR FURTHER INFORMATION CONTACT: John H. Hanley, Director, Legislative and Regulatory Department; or Catherine B. Klion, Manager, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026; 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Background

Pension Benefit Guaranty Corporation (PBGC) administers the pension insurance programs under Title IV of the Employee Retirement Income Security Act of 1974 (ERISA). In order to give PBGC an opportunity to anticipate and attempt to minimize potential liabilities that may arise from the termination of significantly underfunded plans, ERISA section 4010 requires the reporting of actuarial and financial information by controlled groups with pension plans that have significant funding problems. That information is exempt from disclosure under section 552 of title 5, United States Code and may not be made public, except as may be relevant to any administrative or judicial action or proceeding.

Pursuant to ERISA section 4010, PBGC issued its regulation on Annual Financial and Actuarial Information Reporting in 1995 (29 CFR part 4010). The regulation specifies the items of identifying, financial, and actuarial information that filers must submit under section 4010. PBGC reviews the

information that is filed and enters it into an electronic database for more detailed analysis. Computer-assisted analysis of this information helps PBGC to anticipate possible major demands on the pension insurance system and to focus PBGC resources on situations that pose the greatest risks to that system. Because other sources of information are usually not as current as the section 4010 information, the section 4010 filing plays a major role in PBGC's ability to protect participant and premium-payer interests.

In March of 2005, PBGC amended part 4010 to require electronic reporting and to make other less significant changes. Reporting is now accomplished through PBGC's secure e-4010 Web-based application.

PPA 2006 Changes

On August 17, 2006, the President signed into law the Pension Protection Act of 2006, Public Law 109–280 (''PPA 2006''), which made numerous changes in the area of pension law, including changes to ERISA section 4010. Prior to its amendment by PPA 2006, ERISA section 4010(b) required reporting, in general, if: (1) The aggregate unfunded vested benefits of all plans maintained by members of the controlled group exceeded $50 million, disregarding plans with no unfunded vested benefits (the ''$50 Million Gateway Test''); (2) the conditions specified in ERISA section 302(f) and section 412(n) of the Internal Revenue Code (''Code'') for imposing a lien for missed contributions exceeding $1 million had been met with respect to any plan maintained by any member of the controlled group; or (3) the Internal Revenue Service had granted minimum funding waivers in excess of $1 million to any plan maintained by any member of the controlled group, and any portion of the waiver(s) was still outstanding.

Section 505 of PPA 2006 amended ERISA section 4010(b)(1), replacing the $50 Million Gateway Test with a test based on the funding target attainment percentage of each plan in the controlled group. As amended by PPA 2006, ERISA section 4010(b)(1) requires reporting if:

> the funding target attainment percentage (as defined in subsection (d) [1]) at the end of the preceding plan year of a plan maintained by the contributing sponsor or any member of its controlled group is less than 80 percent.

(Current filers are reminded that PBGC regulations provide that if a filer for the immediately preceding information year is not required to file for the current information year, the filer must submit information, in accordance with the instructions on PBGC's Web site, demonstrating why a filing is not required for the current information year. This requirement would apply, for example, to a filer who was required to file for the information year ending on December 31, 2007, based on the $50 million Gateway Test, but who is not required to file for the information year ending on December 31, 2008, based on the new funding target attainment percentage gateway test.)

Although PPA 2006 did not alter the substance of the other two triggers (found in paragraphs (b)(2) and (b)(3) of ERISA section 4010), it made other changes that affect these provisions. For instance, because PPA 2006 made changes to references in paragraph (b)(2), references in § 4010.4(a) (which describes who must file under part 4010) need to be amended. Similarly, PPA 2006 made changes to the minimum funding waiver provisions, which are referred to in part 4010.

Finally, PPA 2006 added ERISA sections 4010(d)(1) and 4010(e). ERISA section 4010(d)(1) lists three items that must be included in the information filers submit to PBGC.[2] ERISA section 4010(e) requires PBGC to submit to Congress an annual summary report of the information submitted to PBGC pursuant to ERISA section 4010.

Summary of Proposed Rule

This proposed rule would amend part 4010 of PBGC's regulations to implement the change to ERISA section 4010(b)(1). In particular, this proposed rule provides guidance on how to determine whether reporting is required with respect to a plan based on the plan's funding target attainment percentage. The proposed rule would also make conforming changes to address the PPA 2006 changes affecting the section 4010 reporting triggers based on the imposition of certain liens or on the granting of certain minimum funding waivers.

In conjunction with these changes, PBGC also is proposing: (1) To waive reporting in certain cases for controlled groups with aggregate underfunding of $15 million or less; (2) to modify the standards for determining which plans are exempted from reporting actuarial information; (3) to modify the reporting requirements in light of the PPA 2006 changes; and (4) to make other clarifications (for instance, the proposed rule would provide guidance for reporting for multiple employer plans and for dealing with certain unusual timing issues with respect to plan years and information years).

The proposed rule would be applicable to information years beginning after December 31, 2007. (In the rare case of a short information year beginning in 2008, such as an information year beginning on January 1, 2008, and ending on March 31, 2008, the employer should contact PBGC to request a reporting extension.) However, the changes made to paragraphs (a) and (b) of § 4010.8 (Plan actuarial information) are effective only for plan years beginning after December 31, 2007.

Discussion of Proposed Rule

Information Year

In the original proposed rule under ERISA section 4010 (60 CFR 35308, July 6, 1995), PBGC introduced the concept of ''information year'' The information year is the fiscal year, except that in the case of controlled group members with different fiscal years, the information year is the calendar year (§ 4011.5). In the preamble to that original proposed rule, PBGC explained that ''information year'' serves four purposes:

> First, it will help persons determine which plan years and fiscal years to use to identify Filers. Second, it will help Filers determine whether a pension plan qualifies for a filing exemption. Third, it is used to identify the information to be submitted by a Filer. Fourth, it establishes the due date for submission of required information by a Filer. The regulation does not require a Filer to change its fiscal year or the plan year of any pension plan. Further, the regulation does not require a Filer to report financial information on any accounting period other than an existing fiscal year or to report actuarial information for any period other than the existing plan year of a pension plan. Generally, the Information Year is the fiscal year of the Filer. If all members of a controlled group do not report financial information on the same fiscal year, the Information Year is the calendar year.

''Information year'' has been integral to the process of reporting under ERISA section 4010 and PBGC finds no indication that PPA 2006 alters this. Therefore, under the proposed rule, reporting will continue to be based on the concept of ''information year.'' Under the proposed rule, reporting

[1] ERISA section 4010(d)(2)(B) was added by section 505 of PPA 2006 and provides that ''the term 'funding target attainment percentage' has the meaning provided in section 302(d)(2) [sic].'' However, ERISA section 302(d)(2) contains no reference to ''funding target attainment percentage'' but applies to certain retroactive plan amendments. On the other hand, ERISA section 303(d)(2) is entitled ''Funding Target Attainment Percentage'' and provides a definition for that term. Therefore, this proposed rule presumes the reference should have been to ERISA section 303(d)(2).

[2] ERISA section 4010(a), which was unaltered by PPA 2006, provides that filers must provide the information specified by PBGC in regulations.

would be required (unless otherwise waived) if any plan within the controlled group has a funding target attainment percentage of less than 80 percent for the plan year ending within the information year (the ''80% Funded Gateway Test'').

The proposed rule also would clarify how the 4010 requirements apply to certain unusual situations, such as when a plan has two plan years that end in the information year or has no plan year that ends in the information year. Under the proposed rule, the last plan year ending on or before the end of the information year would be treated as the plan year that ends within the information year. In addition, in order to prevent circularity, the proposed rule would provide that when a controlled group reports on the basis of two different fiscal years, the determination of whether an entity is exempt is made on the basis of a calendar year information year.

Funding Target Attainment Percentage

As discussed above, ERISA section 4010(b)(1), as amended by PPA 2006, requires reporting if the funding target attainment percentage at the end of the preceding plan year of a plan maintained by the contributing sponsor or any member of its controlled group is less than 80 percent. ERISA section 303(d)(2) provides that the ''funding target attainment percentage'' of a plan for a plan year is the ratio (expressed as a percentage) which—

(A) the value of plan assets for the plan year (as reduced under subsection (f)(4)(B)), bears to

(B) the funding target of the plan for the plan year (determined without regard to subsection (i)(1)).

In accordance with ERISA section 303(g)(1), for a plan year, the value of plan assets and the funding target of a plan are determined as of the valuation date of the plan for such plan year. Under ERISA section 303(g)(2), the valuation date for nearly all plans subject to 4010 reporting will be the beginning of the plan year.[3] Thus, while section 4010(b)(1) refers to the funding target attainment percentage at the end of the preceding plan year, in nearly all cases both elements of the funding target attainment percentage must be calculated as of the beginning of the plan year. This creates an ambiguity with regard to the date as of which the funding target attainment percentage is to be calculated for purposes of section 4010(b)(1).

The proposed rule would resolve this ambiguity by providing that the funding target attainment percentage (for purposes of the 80% Funded Gateway Test) would be determined as of the valuation date for the plan year ending within the information year—generally, the first day of the plan year that ends within the information year. Because plans will need to determine the funding target attainment percentage as of the valuation date for other purposes, measuring the funding target attainment percentage as of the valuation date for the 80% Funded Gateway Test should be less burdensome on prospective filers than requiring a separate determination as of the end of the preceding plan year. In addition, using this measurement date will give controlled groups ample time to determine whether reporting is required pursuant to the 80% Funded Gateway Test and to prepare the section 4010 filing (if required) by the due date.

Reduction of Assets Based on Carryover and Prefunding Balances

ERISA section 303(d)(2) provides that in determining the funding target attainment percentage of a plan for a plan year, plan assets are reduced by the amount of the prefunding balance and the funding standard carryover balance. Plan sponsors are permitted under ERISA section 303(f) to make certain elections to use, increase, or reduce a prefunding balance or a funding standard carryover balance effective at the beginning of the plan year. Under PPA 2006, the Department of the Treasury (''Treasury'') is to provide guidance on the timing and manner of these elections. On August 31, 2007, Treasury published a proposed rule (Benefit Restrictions for Underfunded Pension Plans) in the **Federal Register** at 72 FR 50544, which would provide guidance on such elections. That rule would require any such election to satisfy certain timing rules. As proposed, those Treasury rules would require an election that affects the funding target attainment percentage for a plan year to be made well before the due date for the section 4010 filing. Therefore, PBGC's proposed rule assumes that filers will have no difficulty including these elections in determinations made for purposes of section 4010. However, if under final Treasury regulations it is possible for a plan sponsor to make such an election after the due date for the section 4010 filing, the PBGC would expect controlled groups to anticipate any such election when determining the funding target attainment percentage, regardless of when the election is made.

Certain Plans to Which Special Funding Rules Apply

Sections 104, 105, and 106 of PPA 2006 defer the effective date of the funding amendments for certain plans described in those sections, which in general deal with plans of cooperatives, plans affected by settlement agreements with PBGC, and plans of government contractors. Section 402 of PPA 2006 applies special funding rules to certain plans of commercial passenger airlines and airline caterers. Section 402 of PPA was amended by the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, Public Law 110–28. None of these provisions affects the applicability of the amendments to ERISA section 4010. The proposed rule provides explicitly that plans in this small group must apply part 4010 in the same manner as all other plans (i.e., without regard to these sections of PPA). However, for purposes of § 4010.8(a)(9) (which specifies what information must be contained in the actuarial valuation report), the filer must provide details of any such funding rules that are applicable to the plan. Where the different funding rules for this small group affect an item described in § 4010.8(a)(9), PBGC would expect that filers could, in consultation with PBGC, provide appropriately modified information.

Minimum Funding Waivers

ERISA section 4010(b) requires 4010 reporting if the Internal Revenue Service has granted minimum funding waivers in excess of $1 million to any plan maintained by any member of the controlled group and as of the end of the plan year ending within the information year there is an outstanding balance on the waiver.

In general, the waiver will continue to be included for all five years of the amortization period, unless the waiver amortization bases are reduced to zero pursuant to ERISA section 303(e)(5) or Code section 430(e)(5). PBGC notes that there is some uncertainty as to the effect of PPA 2006 on the carryover balances for funding waivers granted before 2008. The proposed rule makes clear that the statutory amortization period will not be deemed to have ended merely because

[3] ERISA section 303(g)(2) provides that the valuation date of a plan for any plan year is the first day of the plan year, except that certain small plans may designate any date in the plan year to be the valuation date for the plan year and succeeding plan years. For this purpose, small plans are plans with 100 or fewer participants on each day of the plan year, when aggregated with all plans in the controlled group. Because PBGC proposes to exclude controlled groups with under $15 million in underfunding, plans that would be considered small plans for purposes of determining valuation dates would rarely be subject to reporting under part 4010. Therefore, the valuation date for nearly all plans subject to 4010 reporting would be the beginning of the plan year.

the funding waivers granted with respect to plan years beginning before 2008 are not carried over as a separate amortization base for the post-2007 plan years.

To simplify the regulation, the proposed rule would eliminate the provision in the current regulation that provides that a minimum funding waiver is not outstanding under certain circumstances where an agreement requires the maintenance of a specific credit balance. PBGC found that this occurred infrequently. In those cases where it does occur, PBGC will consider waiving the 4010 reporting requirement on a case-by-case basis under § 4010.11.

Reporting Requirements

In addition to the requirements described in ERISA section 4010(a), which provides that filers must submit certain financial and actuarial information as prescribed by PBGC in regulations, ERISA section 4010(d), as amended by PPA 2006, specifies three items that are required to be filed with PBGC. That section provides that information filed under section 4010 must include:

(1) The amount of benefit liabilities under the plan determined using the assumptions used by the corporation [PBGC] in determining liabilities;

(2) The funding target of the plan determined as if the plan has been in at-risk status for at least 5 plan years; and

(3) The funding target attainment percentage of the plan.

The proposed rule provides detailed guidance on how to determine benefit liabilities as described in item (1), i.e., how to determine benefit liabilities for ongoing plans using the assumptions used by PBGC in determining liabilities. This determination would be similar to that set forth in the current regulation under § 4010.8(d)(2). As with the current regulation, the proposed rule would require filers to use the assumptions prescribed by §§ 4044.51 through 4044.57. However, as explained below, in two respects the proposed regulation would modify or expand upon previous guidance (including informal guidance) given by PBGC or PBGC staff relating to certain assumptions not specified in §§ 4044.51 through 4044.57.

First, the proposed rule provides that solely for purposes of determining the earliest retirement age (ERA) at valuation date and the unreduced retirement age (URA) to be used when determining expected retirement age (XRA), an active participant would be treated as continuing in service after the end of the plan year. This provision would modify informal guidance provided by PBGC that future expected service should be disregarded when determining XRAs for 4010 liability calculations.[4] This modification would eliminate an inconsistency between how filers compute benefit liabilities for 4010 purposes and how PBGC calculates benefit liabilities as part of its plan monitoring functions. The main impact of this change on 4010 filers would be that they would need to make a one-time modification of their computer programs. The proposed rule includes examples demonstrating how XRA would be calculated and applied in determining benefit liabilities.

Second, the proposed rule provides that a 4010 filer would be permitted to use pre-retirement assumptions other than mortality (such as turnover and disability assumptions) as long as the filer uses the same pre-retirement assumptions used to determine minimum required contributions. This provision would expand informal guidance provided by PBGC that it is permissible for 4010 purposes to use pre-retirement assumptions other than mortality.[5] The informal guidance was silent on which pre-retirement assumptions could be used. In PBGC's experience, most actuaries who choose to use pre-retirement assumptions for 4010 purposes use those same pre-retirement assumptions to determine minimum required contributions. Because the actuary certifies that the funding assumptions represent his best estimate of future experience, this practice is entirely reasonable, and the proposed rule would codify it for consistency.

The proposed rule also would clarify that, with the exception of pre-retirement assumptions, any other assumptions used to determine the minimum required contribution that are not overridden by §§ 4044.51 through 4044.57 must be used when determining benefit liabilities.

In addition to providing detailed guidance on how to determine benefit liabilities, the proposed rule reflects new requirements (under PPA 2006) to provide the funding target of the plan determined as if the plan has been in at-risk status for at least 5 plan years, and the funding target attainment percentage of the plan. Finally, for each plan (other than an exempt plan), the proposed rule would require filers to report whether the plan, at any time during the plan year, was subject to any of the limitations described in ERISA section 206(g) and, if so, which limitations applied, when such limitations applied, and when they were lifted (if applicable).

As with the current rule, the proposed rule would require submission of the actuarial valuation report for the plan year ending within the filer's information year and would specify what information must be included in or attached to the report. PBGC is proposing to modify the required items of information to better suit the new funding structure instituted by PPA 2006. The required information is information that PBGC expects most actuaries would include in valuation reports once PPA 2006 takes effect (e.g., target normal cost, information on shortfall amortization bases, information on funding assumptions, an age/service scatter). However, because the funding rules have changed so dramatically as a result of PPA 2006, and because Treasury regulations implementing the new funding rules are not yet final, the list of required items may exclude some relevant actuarial information. To allow PBGC to expand the list of required items as it gains more experience with the new funding requirements under PPA 2006, the proposed rule would provide that the online instructions to PBGC's secure e-4010 web-based application may require that additional items be included in (or attached to) the valuation report. PBGC expects that any additional items would be items typically required to be reported on the Form 5500 schedule for defined benefit plan actuarial information (Schedule SB).

Because the new actuarial reporting requirements are geared to the new funding rules, which generally are applicable to plan years beginning after December 31, 2007, the changes made to the actuarial information requirements under § 4010.8(a) and (b) would not apply to plan years beginning before 2008. Information for such plan years would be based upon the prior regulation. (Note that the other paragraphs of § 4010.8 (as proposed), such as the new rules for determining which plans would be exempt from actuarial reporting requirements (§ 4010.8(c)) and the determination of liabilities (§ 4010.8(d)) would apply to all plan years ending within an information year that begins on or after January 1, 2008.)

[4] Q&A 17 in the 2001 Blue Book and Q&A 19 in the 2002 Blue Book, available at *www.pbgc.gov.* Blue Books are summaries of the questions and answers discussed at meetings between PBGC staff and representatives of the Enrolled Actuaries Program Committee in preparation for the annual Enrolled Actuaries Meetings. The summaries reflect the views of individual staff members and do not represent the official position of PBGC.

[5] Q&A 25 in the 2000 Blue Book.

Waiver for Controlled Groups With Plan Underfunding Not Exceeding $15 Million

The Technical Explanation of PPA 2006 prepared by the Staff of the Joint Committee on Taxation states: ''It is intended that the PBGC may waive the requirement [for reporting under ERISA section 4010 based upon the 80% Funded Gateway Test] in appropriate circumstances, such as in the case of small plans.'' Moreover, PBGC seeks to balance the benefit it derives from annual reporting of financial and actuarial information with the burden reporting imposes on filers. As the total underfunding in a filer's controlled group becomes smaller, the benefit PBGC derives from reporting lessens, while the burden on the filer tends to increase relative to the filer's resources. Based on its experience, PBGC has determined that controlled groups with aggregate plan underfunding of $15 million or less present a level of risk and exposure to PBGC that is sufficiently low to warrant the waiver of reporting based on the 80% Funded Gateway Test.

Therefore, PBGC is proposing to waive reporting for a controlled group if the aggregate plan underfunding does not exceed $15 million (disregarding those plans with no underfunding); however, the waiver would not apply if reporting is required for any reason other than having a funding target attainment percentage below 80 percent. For this purpose, plan underfunding would equal the ''4010 funding shortfall.'' The proposed rule would define the 4010 funding shortfall as the funding shortfall defined in ERISA section 303(c)(4), but determined without regard to the credit balance reduction under ERISA section 303(f)(4)(B).

Exempt Plans

Section 4010.8(c) of PBGC's current regulation provides that reporting actuarial information is not required for plans with fewer than 500 participants. (It also provides an exemption for overfunded plans.) Through means other than reporting under part 4010, such as through PBGC's early warning program (see Technical Update 00–3, available at *www.pbgc.gov*) and reportable events notices, PBGC has discovered that a number of plans with fewer than 500 participants have significant underfunding and thereby represent significant financial exposure for PBGC. In such cases, PBGC needs actuarial information on these plans to properly evaluate its risk and exposure for the entire controlled group. Therefore, PBGC is proposing to modify the exemption from reporting actuarial information. Under the proposed rule, actuarial information would not be required if (1) the plan has fewer than 500 participants, and (2) the plan's 4010 funding shortfall does not exceed $15 million. For this purpose, the 4010 funding shortfall would be determined as of the valuation date for the plan year ending within the information year and would be based upon the same methodology prescribed for purposes of determining whether the $15 million controlled-group waiver would apply.

The proposed rule retains the exemption from providing actuarial information for plans that have no unfunded benefits. For this purpose, unfunded benefits would be determined in the same manner as they would be determined for purposes of ERISA section 4010(d)(1), which requires the reporting of benefit liabilities using the assumptions used by PBGC. The only difference is that the filer would be allowed to use the retirement age assumptions used by the plan for that plan year for purposes of section 303 of ERISA (without regard to the at-risk assumptions of section 303(i) of ERISA) instead of the retirement age assumptions in § 4044.8(d)(2).

Note that, as under the current regulation, these exemptions from reporting actuarial information do not apply if the plan has a funding waiver or has been more than 10 days late with minimum funding contributions.

Multiple Employer Plans

Over the last decade, PBGC has received a number of inquiries on the application of ERISA section 4010 to contributing sponsors of multiple employer plans. The proposed rule would provide for reduced reporting for certain multiple employer plans. In general, only information on employers that are among the 10 largest employers in terms of participants (for hourly plans) or contributions (for salaried plans) would need to be provided. Of course, PBGC could request additional information pursuant to § 4010.6(b). In addition, the proposed rule would allow a filer to provide the actuarial information on a multiple employer plan by reference if that information (for the same plan year) has been provided by another filer. The proposed rule would clarify that the entire underfunding (i.e., funding shortfall) of a multiple employer plan is counted when determining whether the $15 million controlled-group waiver applies to an employer that is a contributing sponsor of the multiple employer plan. It also would clarify that filers are not required to provide identifying or financial information for another contributing sponsor of the multiple employer plan if that other contributing sponsor is not a member of the filer's controlled group.

Applicability

Section 505(e) of PPA 2006 provides that the amendments made by section 505 apply with respect to ''years beginning after 2007.'' We note that this applicability provision of PPA 2006 uses the term ''year'' rather than ''plan year,'' although the term ''plan year'' appears in other applicability provisions in PPA 2006. PBGC interprets this section of PPA to mean the amendments apply to any information year beginning after 2007. Therefore, these rules, if adopted, would apply to information years beginning after 2007. In the rare case of a short information year beginning in 2008 (for example, an information year beginning on January 1, 2008, and ending on March 31, 2008), the employer should contact PBGC to obtain a reporting extension. However, the changes made to paragraphs (a) and (b) of § 4010.8 (Plan actuarial information) are effective only for plan years beginning after December 31, 2007.

Transition Rules

Under the proposed rule, a number of valuation determinations (for instance, the 80% Funded Gateway Test, the $15 million controlled-group waiver, and the $15 million small-plan exemption from reporting actuarial information) would be made as of the valuation date for the plan year ending within the information year. For these purposes, the valuation determination is based on either the funding target attainment percentage or the 4010 funding shortfall as of the valuation date. The provisions of PPA 2006 defining funding target attainment percentage and funding shortfall apply only to plan years beginning after 2007. Therefore, for plan years beginning in 2007 but ending in information years that begin after 2007 (and thus covered by these proposed rules), the funding target attainment percentage and funding shortfall are not prescribed by statute. As a result, this proposed rule would require employers to use a surrogate for determining the funding target attainment percentage and funding shortfall for plan years beginning before January 1, 2008. PBGC's proposed surrogate would be similar to a rule proposed by Treasury in its proposed benefit restrictions rule. Section 1.436–1(j)(2)(iii) of Treasury's proposed rule provides that, for benefit restriction purposes, the funding target

attainment percentage for a pre-effective plan year is determined as a fraction (expressed as a percentage), the numerator of which is the value of net plan assets, and the denominator of which is the plan's current liability on the valuation date for the last plan year that begins before 2008 (the 2007 plan year). For this purpose, the value of plan assets is determined under Code section 412(c)(2) as in effect for the 2007 plan year, except that the value of plan assets prior to subtraction of the plan's funding standard account credit balance described below can neither be less than 90 percent of the fair market value of plan assets nor greater than 110 percent of the fair market value of plan assets on the valuation date for that plan year. In addition, if a plan has a funding standard account credit balance as of the valuation date for the 2007 plan year, that balance must be subtracted from the asset value described above as of that date unless the value of plan assets is greater than or equal to 90 percent of the plan's current liability determined under Code section 412(l)(7) on the valuation date for the 2007 plan year. Finally, if the employer makes an election to reduce some or all of the funding standard carryover balance as of the first day of the first plan year beginning in 2008 in accordance with § 1.430(f)–1(e) of Treasury's proposed rule, then the present value (determined as of the valuation date for the prior year using the valuation interest rate for that prior year) of the amount so reduced is not treated as part of the funding standard account credit balance when that balance is subtracted from the value of net plan assets.

PBGC's proposed rule would provide that the funding target attainment percentage for section 4010 purposes for plan years beginning before 2008 would equal the funding target attainment percentage as determined under Treasury's proposed special rule (§ 1.436–1(j)(2)(iii) of the regulation as proposed), except that: (1) Current liability would be determined by using the highest allowable interest rate for the plan year; and (2) there would be no special rule providing that if the value of plan assets is greater than or equal to 90 percent of the plan's current liability determined under Code section 412(l)(7) on the valuation date for the 2007 plan year, the value of assets is not reduced by the credit balance.

The surrogate for 4010 funding shortfall would equal the excess, if any, of the plan's current liability over the value of plan assets. For this purpose, both current liability and plan assets would be determined in the same manner as determined for purposes of PBGC's transition rule for determining funding target attainment percentage, except that assets would not be reduced by the credit balance in the funding standard account (i.e., there would be no reduction as described in 26 CFR 1.436–1(j)(2)(iii)(B)(2) and (3) (as proposed)).

The following example demonstrates how the transition rules would work.

Example. Assume Company X, which reports based on a calendar year information year, maintains Plan A, which has a plan year beginning on October 1 and ending on September 30 and an October 1 valuation date. The October 1, 2007 valuation results were as follows: actuarial value of assets of $115 million, market value of assets of $100 million and current liability of $135 million. In addition, assume the funding standard account credit balance as of September 30, 2007, was $20 million and that the employer does not elect to reduce the October 1, 2008, carryover balance at all.

For the section 4010 report due on April 15, 2009, the proposed rule prescribes that the 80% Funded Gateway Test is based on the plan's funding target attainment percentage as of October 1, 2007. However, because funding target attainment percentage for purposes of ERISA section 303 applies to plan years beginning after 2007, the funding target attainment percentage is determined using a surrogate prescribed in § 4010.4(b)(3) of the proposed rule.

The surrogate funding target attainment percentage is calculated as follows: First, because the 2007 actuarial value of assets is more than 10% above the market value of assets, assets are reduced to $110 million. Next, assets are reduced by the credit balance resulting in an asset value for the Funding Target Attainment Percentage of $90 million ($110 million minus $20 million). The surrogate Funding Target Attainment Percentage is the ratio of $90 million to the plan's current liability using the highest permitted rate ($135 million). So, the surrogate Funding Target Attainment Percentage is 67% ($90/$135). Since this is less than 80%, a section 4010 filing is required (unless the aggregate 4010 funding shortfall is less than $15 million).

(Note that if the employer elects to reduce some, or all, of the October 1, 2008, carryover balance in accordance with the election procedures provided in 26 CFR 1.430(f)–1(e) (as proposed), the discounted value of the waived amount would be subtracted from the $20 million credit balance before the $20 million credit balance is subtracted from the $110 million adjusted asset value.)

The surrogate 4010 funding shortfall is determined under § 4010.11(c)(2) and equals the excess, if any, of liability using the highest permitted rate ($135 million) over assets (after any adjustments to bring the asset value within 10% of market value). For this calculation, assets are not reduced by the credit balance. Therefore, the 4010 funding shortfall is the excess of $135 million over $110 million, or $25 million.

Compliance With Rulemaking Guidelines

PBGC has determined that this proposed rule is a ''significant regulatory action'' under Executive Order 12866. The Office of Management and Budget has therefore reviewed the proposed rule under Executive Order 12866.

Pursuant to section 1(b)(1) of E.O. 12866 (as amended by Executive Order 13422), PBGC has determined that regulatory action is required in this area. Principally, this regulatory action is necessary to implement the changes made to ERISA section 4010 by PPA 2006. The proposed rule would provide guidance without which plan sponsors would have significant difficulty determining whether reporting is required. Moreover, ERISA section 4010 specifically provides that the actuarial and financial information to be reported, as well as the deadline for reporting, are as specified by PBGC in regulations. Finally, the proposed rule would provide exemptions, waivers, and reporting simplifications that reduce reporting burden for numerous plan sponsors.

PBGC certifies under section 605(b) of the Regulatory Flexibility Act that the amendments in this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would implement statutory changes made by Congress. It provides guidance on how to determine whether reporting under ERISA section 4010 is required and what to report. Furthermore, PBGC is providing an exemption for controlled groups that have total plan underfunding of $15 million or less. Accordingly, as provided in section 605 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), sections 603 and 604 do not apply.

The information requirements relating to reporting under ERISA section 4010 have been approved by the Office of Management and Budget under the Paperwork Reduction Act (OMB control number 1212–0049, expires February 29, 2008).

PBGC is submitting the information requirements relating to these amendments to the Office of Management and Budget for review and approval under the Paperwork Reduction Act. (This submission also includes the information requirements relating to the current collection of 4010 information.) Copies of PBGC's request may be obtained free of charge by contacting the Disclosure Division of the Office of the General Counsel of PBGC,

1200 K Street, NW., Washington, DC 20005, 202–326–4040.

PBGC expects that once the new rules take effect it will receive section 4010 filings from about 300 contributing sponsors or controlled group members annually and that the total annual burden of the collection of information will be about 2,600 hours and $5,167,500. (Detailed information on these burden estimates is included in PBGC's request.)

Comments on the paperwork provisions under this proposed rule should be mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Pension Benefit Guaranty Corporation, via electronic mail at *OIRA_DOCKET@omb.eop.gov* or by fax to (202) 395–6974. Although comments may be submitted through April 21, 2008, the Office of Management and Budget requests that comments be received on or before March 21, 2008 to ensure their consideration. Comments may address (among other things)—

- Whether the proposed collection of information is needed for the proper performance of PBGC's functions and will have practical utility;
- The accuracy of PBGC's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhancement of the quality, utility, and clarity of the information to be collected; and
- Minimizing 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.

List of Subjects in 29 CFR Part 4010

Pension insurance, Pensions, Reporting and recordkeeping requirements.

For the reasons given above, PBGC proposes to amend 29 CFR parts 4010 as follows.

PART 4010—ANNUAL FINANCIAL AND ACTUARIAL REPORTING

1. The authority citation for part 4010 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1310.

§ 4010.1 [Amended]

2. Section 4010.1 is amended by removing the words ''the PBGC under section 4010 of ERISA'' and adding in their place the words ''PBGC under ERISA section 4010''; and by removing the last sentence of the section (beginning with the words ''This part applies * * *'').

3. In § 4010.2:

a. The words ''of this part'' are removed from the definitions of ''exempt entity,'' ''exempt plan,'' ''filer,'' and ''information year.''

b. The definition of ''exempt entity'' is amended by removing the figures ''4010.4(d)'' and adding in their place the figures ''4010.4(c)''.

c. The definition of ''information year'' is amended by removing the words ''the year'' and adding in their place the words ''the information year''.

d. The definition of ''fair market value of the plan's assets'' is revised, and five new definitions are added, to read as follows:

§ 4010.2 Definitions.

* * * * *

4010 funding shortfall means, with respect to a plan for a plan year, the 4010 funding shortfall as determined under § 4010.11(c).

At-risk status means, with respect to a plan for a plan year, at-risk status as defined in ERISA section 303(i)(4).

* * * * *

Fair market value of the plan's assets means the fair market value of the plan's assets determined without regard to any contributions receivable (i.e., contributions made after the date as of which the fair market value of the plan's assets is determined are not included).

* * * * *

Funding target means, with respect to a plan for a plan year, the funding target as provided under ERISA section 303(d)(1) determined as of the valuation date for the plan year.

Funding target attainment percentage means, with respect to a plan for a plan year, the funding target attainment percentage as determined under § 4010.4(b) for the plan year.

* * * * *

Valuation date means, with respect to a plan for a plan year, the valuation date as determined under ERISA section 303(g)(2).

§ 4010.3 [Amended]

4. In § 4010.3, paragraph (a) is amended by revising the paragraph heading to read ''*General.*''; by removing the words ''exempt plans) and except'' and adding in their place the words ''exempt plans), and except'' (with a comma after the closing parenthesis); by removing the words ''waivers have been granted under § 4010.11'' and adding in their place the words ''one or more waivers under § 4010.11 apply''; by removing the words ''plans maintained by members of a controlled group'' and adding in their place the words ''plans maintained by members of the controlled group''; by removing the words ''the PBGC'' (where they appear twice in the paragraph) and adding in their place each time the word ''PBGC''; and by removing the words ''the PBGC's'' and adding in their place the word ''PBGC's''.

5. In § 4010.4:

a. Paragraph (a) introductory text is amended by removing the words ''paragraph (d)'' and adding in their place the words ''paragraph (c)''.

b. Paragraph (a)(1) is amended by removing the words ''The aggregate unfunded vested benefits of all plans'' and adding in their place the words ''For any plan''; by removing the words ''any exempt plans'' and adding in their place the words ''an exempt plan''; and by removing the words ''group exceed $50 million (disregarding those plans with no unfunded vested benefits)'' and adding in their place the words ''group, the funding target attainment percentage for the plan year ending within the information year is less than 80 percent''.

c. Paragraph (a)(2) is amended by removing the words ''a controlled group'' and adding in their place the words ''the controlled group''; and by removing the words ''section 302(f)(1)(A) and (B) of ERISA or section 412(n)(1)(A) and (B) of the Code'' and adding in their place the words ''ERISA section 303(k) or Code section 430(k)''.

d. Paragraph (a)(3) is amended by removing the words ''a controlled group'' and adding in their place the words ''the controlled group''; by removing the words ''section 303 of ERISA or section 412(d) of the Code'' and adding in their place the words ''ERISA section 302(c) or Code section 412(c)''; and by removing the words ''(determined in according with paragraph (c) of this section)''.

e. Paragraph (c) is removed.

f. Paragraph (d) is redesignated as paragraph (c).

g. Paragraph (b) is revised, and new paragraphs (d), (e), and (f) are added, to read as follows:

§ 4010.4 Filers.

* * * * *

(b) *Funding target attainment percentage*—(1) *General.* Except as provided in paragraph (b)(3) of this section, the funding target attainment percentage for a plan for a plan year equals the funding target attainment percentage as provided under ERISA section 303(d)(2) determined as of the valuation date for the plan year.

(2) *Prefunding balance and funding standard carryover balance elections.* For purposes of determining the funding target attainment percentage for a plan for a plan year, prefunding balances and funding standard carryover balances must reflect any elections (or deemed elections) under ERISA section 303(f) or Code section 430(f) for the plan year, regardless of when the elections (or deemed elections) are made.

(3) *Transition rule for plan years beginning before 2008.* For plan years beginning before 2008, the funding target attainment percentage for a plan for a plan year equals the funding target attainment percentage as determined under 26 CFR 1.436–1(j)(2)(iii), *except*—

(i) Current liability is determined using the highest rate of interest allowable under Code section 412(l)(7) (as in effect for plan years beginning before 2008) for that plan year, regardless of whether that rate was actually used to determine current liability for the plan year; and

(ii) The value of net plan assets is determined without regard to the second sentence of 26 CFR 1.436–1(j)(2)(iii)(B)(*2*) (*i.e.*, for this purpose, there is no special rule that provides that assets are not reduced by the credit balance if the value of plan assets is greater than or equal to 90 percent of the plan's current liability).

* * * * *

(d) *Transition rule; failure to make required contribution; minimum funding waiver.* For plan years beginning before 2008, the reference in paragraph (a)(2) of this section to ''ERISA section 303(k) or Code section 430(k)'' is replaced by a reference to ''ERISA section 302(f)(1)(A) and (B) or Code section 412(n)(1)(A) and (B)'', and the reference in paragraph (a)(3) of this section to ''ERISA section 302(c) or Code section 412(c)'' is replaced by a reference to ''ERISA section 303 or Code section 412(d)'' as those provisions are in effect for plan years beginning before 2008.

(e) *Minimum funding waiver*—(1) *General.* For purposes of § 4010.4(a)(3), a portion of the minimum funding waiver for a plan is considered outstanding unless prior to the plan year ending within the information year the statutory amortization period has ended or, as of the valuation date for the plan year ending within the information year, the amortization bases are deemed to be reduced to zero pursuant to ERISA section 303(e)(5) and Code section 430(e)(5). However, the statutory amortization period will not be deemed to have ended merely because the funding waivers granted with respect to plan years beginning before 2008 are not carried over as a separate amortization base for the post-2007 plan years.

(2) *Example.* Company A sponsors Plan X, which received a minimum funding waiver of $700,000 for the plan year ending December 31, 2004, and another waiver of $500,000 for the plan year ending December 31, 2008. Assume that the amortization bases of the waivers are not reduced to zero pursuant to ERISA section 303(e)(5) and Code section 430(e)(5), and the waivers are therefore outstanding for the full five-year statutory amortization period. Also, assume Company A has a calendar information year. For the 2009 information year, Company A must report under ERISA section 4010. However, for the 2010 information year, Company A, assuming no other obligation to report under ERISA section 4010, is not required to report.

(f) *Certain plans to which special funding rules apply.* Except as described in § 4010.8(a)(9)(xiii), the provisions of sections 104, 105, 106, and 402 (as amended by U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, Pub. L. 110–28) of PPA 2006 are disregarded for purposes of this part.

6. In § 4010.5:

a. Paragraph (c)(1) is amended by adding to the end of the paragraph the words ''(If any two members of the controlled group report financial information on the basis of different fiscal years, the determination of whether an entity is an exempt entity is based on a calendar year information year for purposes of this paragraph (c)(1) and § 4010.4(c).)''.

b. Paragraph (c)(2) is revised and new paragraph (d) is added to read as follows:

§ 4010.5 Information year.

* * * * *

(c) *Controlled group members with different fiscal years.*

* * * * *

(2) *Examples.* (i) Companies A and B are the only members of the same controlled group, and both are contributing sponsors to nonexempt plans. Company A has a July 1 fiscal year, and Company B has an October 1 fiscal year. The information year is the calendar year. Company A's financial information with respect to its fiscal year ending June 30, 2009, and Company B's financial information with respect to its fiscal year ending September 30, 2009, must be submitted to PBGC following the end of the 2009 calendar year information year.

(ii) The facts are the same as in example (i) except that Company B is not a contributing sponsor of a plan and would be an exempt entity using the calendar year as the information year. Because Company B is an exempt entity based on a calendar information year, it is excluded when determining the information year. Thus, the information year is the July 1 fiscal year. Note that Company B is an exempt entity even if it would not be exempt based on the July 1 information year.

(iii) The facts are the same as in example (i) except that Company B would not be an exempt entity using the calendar year information year but would be exempt based on an information year that is the July 1 fiscal year. Since Company B is not exempt based on a calendar year information year, it may not be excluded when determining the information year. Therefore, the information year is the calendar year and Company B is not an exempt entity.

(d) *Special rules for certain plan years.* If a plan maintained by the members of the contributing sponsor's controlled group has two plan years that end in the information year or has no plan year that ends in the information year, the last plan year ending on or immediately before the end of the information year is deemed to be the plan year ending within the information year.

§ 4010.6 [Amended]

7. In § 4010.6:

a. Paragraphs (a)(1) and (a)(2) are amended by removing the words ''the PBGC's website'' (which appear once in each paragraph) and adding in their place the words ''PBGC's Web site''.

b. Paragraphs (b) and (c) are amended by removing the words ''the PBGC'' (which appear once in each paragraph) and adding in their place the word ''PBGC''.

8. In § 4010.7:

a. Paragraphs (a) introductory text and (b) introductory text are amended by removing the words ''the PBGC's website'' (which appear once in each paragraph) and adding in their place the words ''PBGC's Web site''.

b. Paragraph (b)(2) is amended by removing the words ''maintaining the plan'' and adding in their place the words ''maintaining the plan (if applicable)''; and by removing the words ''paragraph (b)(1)'' and adding in their place the words ''paragraph (b)(1) of this section''.

c. New paragraph (c) is added to read as follows:

§ 4010.7 Identifying information.

* * * * *

(c) *Multiple employer plans.* A filer that is a contributing sponsor of a

multiple employer plan need not provide identifying information for another contributing sponsor of the multiple employer plan if that other contributing sponsor is not a member of the filer's controlled group, and need not provide identifying information for another plan if neither the filer nor any member of the filer's controlled group is a contributing sponsor of that other plan.

9. In § 4010.8:

a. Introductory text is added to the section.

b. Paragraph (a) introductory text is amended by removing the words ''For each plan'' and adding in their place the words ''Except as provided elsewhere in this part, for each plan''; by removing the words ''the PBGC's website'' and adding in their place the words ''PBGC's Web site''; and by removing the words ''actuarial information'' and adding in their place the words ''actuarial information (except as specified below, determined as of the end of the plan year ending within the filer's information year)''.

c. Paragraph (a)(3) is amended by removing the words ''value of the plan's benefit liabilities'' and adding in their place the words ''amount of benefit liabilities under the plan''; by removing the words ''setting forth separately the value'' and adding in their place the words ''setting forth separately the amount''; and by removing the words ''participants, determined (in accordance with paragraph (d) of this section) at the end of the plan year ending within the filer's information year'' and adding in their place the words ''participants (for this purpose, the amount of benefit liabilities equals the value of benefit liabilities determined in accordance with paragraph (d) of this section)''.

d. Paragraph (a)(4) is amended by removing the words ''for interest (*i.e.*, the specific interest rate(s), such as 5%), mortality, retirement age, and loading for administrative expenses, as''; and by removing the word ''and'' after the semi-colon at the end of the paragraph.

e. Paragraphs (a)(5) and (a)(6) are redesignated as paragraphs (a)(9) and (a)(10) respectively.

f. The introductory text of redesignated paragraph (a)(9) is amended by removing the word ''information'' and adding in its place the words ''information for that plan year''.

g. Paragraph (v) of redesignated paragraph (a)(9) is redesignated as paragraph (xii) of redesignated paragraph (a)(9).

h. Redesignated paragraph (a)(9)(xii) is amended by removing the words ''retirement factors'' and adding in their place the words ''retirement factors; in the case of a plan that provides lump sums, other than *de minimis* lump sums, the summary must include information on how annuity benefits are converted to lump sum amounts (for example, whether early retirement subsidies are reflected)''.

i. Paragraph (b) introductory text is amended by removing the figures ''(a)(5)'' and adding in their place the figures ''(a)(9)''.

j. Paragraphs (b)(1) and (b)(2) are amended by removing the words ''the PBGC'' (which appear once in each paragraph) and adding in their place the word ''PBGC''.

k. Paragraph (b)(2) is further amended by removing the figures ''(a)(6)'' and adding in their place the figures ''(a)(10)''.

l. Paragraphs (c)(1) and (c)(2) are redesignated as paragraphs (c)(2) and (c)(3) respectively.

m. Redesignated paragraph (c)(2) is amended by removing the words ''Has received'' and adding in their place the words ''The plan has received''; and by removing the words ''section 302 of ERISA or section 412 of the Code'' and adding in their pace the words ''ERISA sections 302 and 303 and Code sections 412 and 430''.

n. Redesignated paragraph (c)(3) is amended by removing the words ''Has no'' and adding in their place the words ''The plan has no''; and by removing the words ''§ 4010.4(e) of this part'' and adding in their place the figures ''§ 4010.4(a)(3)''.

o. Paragraph (d)(3) is amended by removing the words ''section 302(d) of ERISA or section 412(*l*) of the Code'' and adding in their place the words ''section 303 of ERISA (without regard to the at-risk assumption of section 303(i) of ERISA)''.

p. Paragraphs (i), (ii), (iii), (iv), (vi), (vii), and (viii) of redesignated paragraph (a)(9), paragraph (c) introductory text, and paragraph (d)(2) are revised, and a new introductory note before paragraph (a), new paragraphs (5), (6), (7), and (8) of paragraph (a), new paragraphs (v), (ix), (x), (xi), (xiii), and (xiv) of redesignated paragraph (a)(9), new paragraph (c)(1), and new paragraphs (e), (f), and (g) are added, to read as follows:

§ 4010.8 Plan actuarial information.

The requirements described in paragraphs (a) and (b) of § 4010.8 prior to their amendment to comply with the changes made to ERISA section 4010 by the Pension Protection Act of 2006 (rather than those described in paragraphs (a) and (b) of this section) are applicable to plan years beginning before 2008.

(a) *Required information.* * * *

* * * * *

(5) The funding target (as of the valuation date) for the plan year ending within the information year determined in accordance with ERISA section 303(i) as if the plan has been in at-risk status for a consecutive period of at least 5 plan years;

(6) The funding target attainment percentage (as of the valuation date) for the plan year ending within the information year;

(7) The adjusted funding target attainment percentage as defined in ERISA section 206(g)(9)(B);

(8) Whether the plan, at any time during the plan year, was subject to any of the limitations described in ERISA section 206(g) and, if so, which limitations applied, when such limitations applied, and when (if applicable) they were lifted;

(9) * * *

(i) The funding target calculated pursuant to ERISA section 303 without regard to subsection 303(i)(1), setting forth separately the value of the liabilities attributable to retirees and beneficiaries receiving payment, terminated vested participants, and active participants (showing vested and nonvested benefits separately);

(ii) A summary of the actuarial assumptions and methods used for purposes of ERISA section 303 and any change in those assumptions and methods since the previous valuation and justifications for any change; in the case of a plan that provides lump sums, other than *de minimis* lump sums, the summary must include the assumptions on which participants are assumed to elect a lump sum and how lump sums are valued;

(iii) The effective interest rate (as defined in ERISA section 303(h)(2)(A));

(iv) The target normal cost calculated pursuant to ERISA section 303 without regard to subsection 303(i)(2);

(v) For the plan year and the four preceding plan years, a statement as to whether the plan was in at-risk status for that plan year;

(vi) In the case of a plan that is in at-risk status, the target normal cost calculated pursuant to ERISA section 303 as if the plan has been in at-risk status for 5 consecutive years;

(vii) The value of the plan's assets (reflecting any averaging method) as of the valuation date and the fair market value of the plan's assets as of the valuation date;

(viii) The funding standard carryover balance and the prefunding balance

(maintained pursuant to ERISA section 303(f)(1)) as of the beginning of the plan year and a summary of any changes in such balances in the past year (*e.g.*, amounts used to offset minimum funding requirement, amounts reduced in accordance with any elections under ERISA section 303(f)(5) or Code section 430(f)(5), interest credited to such balances, and excess contributions used to increase such balances);

(ix) A list of amortization bases (shortfall and waiver) under ERISA section 303, including the year the base was established, the original amount, the installment amount, and the remaining balance at the beginning of the plan year;

(x) An age/service scatter for active participants including average compensation information for pay-related plans and average account balance information for hybrid plans presented in a format similar to that described in the instructions to the Form 5500 schedule for single-employer defined benefit plan actuarial information;

(xi) Expected disbursements (benefit payments and expenses) during the plan year;

* * * * *

(xiii) Details of any special funding rules that apply to the determination of the plan's minimum required contribution (*e.g.*, special amortization schedules or interest rate assumptions applicable to certain plans of commercial airlines, or provisions for certain plans of rural cooperatives, defense contractors, or employers with PBGC settlement agreements); and

(xiv) Any other similar information as specified in instructions on PBGC's Web site; and

* * * * *

(c) *Exempt plan.* The actuarial information specified in this section is not required with respect to a plan if—

(1) The plan—

(i) Has fewer than 500 participants as of the end of the plan year ending within the information year and has a 4010 funding shortfall for the plan year ending within the information year that is not in excess of $15 million, or

(ii) Has benefit liabilities as of the end of the plan year ending within the filers' information year (determined in accordance with paragraph (d) of this section) equal to or less than the fair market value of the plan's assets;

* * * * *

(d) *Value of benefit liabilities.* * * *

* * * * *

(2) *Actuarial assumptions and methods.* The value of benefit liabilities shall be determined using the assumptions and methods prescribed in §§ 4044.51 through 4044.57 of this chapter. In addition to the assumptions described in §§ 4044.51 through 4044.57, the following rules apply:

(i) *Assumptions not included in §§ 4044.51 through 4044.57.* A filer may choose whether to include assumptions for pre-retirement decrements other than mortality (such as turnover or disability assumptions), provided that if such pre-retirement decrements are used, the assumptions used are the same as those used to determine the minimum required contribution under ERISA section 303 for the plan year ending within the filer's information year. Any other assumptions used to determine the minimum required contribution that are not overridden by §§ 4044.51 through 4044.57 (assumed marital status, cost-of-living increase, if applicable, etc.) must be used when determining benefit liabilities.

(ii) *Benefits to be valued.* The value of benefit liabilities includes liabilities for all benefits accrued under the plan (including benefits that are not protected from the anti-cutback provisions of Code section 411(d)(6)) as of the end of the plan year ending within the filer's information year.

(iii) *Future service.* Future service expected to be accrued by an active participant in an ongoing plan during future employment (based on the assumptions used to determine the value of benefit liabilities) must be reflected when determining the earliest retirement age at valuation (ERA) and unreduced retirement age (URA) used to determine expected retirement age (XRA). (For this purpose, ERA, URA, and XRA have the meaning as provided in § 4044.2.) Such expected future service in an ongoing plan (at decrement) is also included in determining an active participant's entitlement to early retirement subsidies and supplements at XRA. (See the examples in paragraph (e) of this section.)

* * * * *

(e) *Examples.* The following examples demonstrate how expected retirement age (XRA) is determined and applied for purposes of determining benefit liabilities under paragraph (d) of this section:

(1) *Example 1*—(i) *Facts.* Plan X has a normal retirement age of 65, but allows benefits to commence as early as age 55 for participants who complete at least 10 years service before termination. Early retirement benefits are reduced (from age 65) for participants with fewer than 25 years of service. Employee A is an active participant who is age 40 and has completed 5 years of service. Assume the ''medium'' XRA look-up table applies and that for purposes of § 4010.8(d), the filer has decided not to take pre-retirement decrements other than mortality into account as permitted under § 4010.8(d)(2)(i).

(ii) *Determination of XRA.* If A continues working, the earliest age A could start receiving benefits is age 55. Therefore, A's ERA is 55. Because the earliest that A can receive an unreduced benefits is when A completes 25 years of service (at age 60), A's URA is age 60. Under the medium XRA look-up table, A's XRA is 58.

(iii) *Determination of benefit liabilities.* The benefit liability is the present value of A's benefit accrued as of the measurement date assuming A retires at age 58 and elects to have payments commence immediately. Since A will not be eligible to receive unreduced benefits at that time, the accrued benefit is reduced in accordance with the plan's early retirement reduction provisions, including any subsidies to which A would be entitled under the assumption that A works until age 58.

(2) *Example 2.* Employee B is also an active participant in plan X and is age 40 with 15 years of service. B will complete 25 years of service at age 50. However, because the plan does not allow for benefit commencement before age 55, B's ERA, URA and thus, XRA are all age 55. (Note: the XRA tables in Appendix D to part 4044 do not show URA's below age 60, but links to extended tables can be found on the PBGC's Web site at the bottom of *http://www.pbgc.gov/practitioners/law-regulations-informal-guidance/content/page14763.html.*) The benefit liability is the present value of B's benefit accrued as of the measurement date assuming B retires at age 55 and elects to commence benefits immediately. Since B will be eligible to receive an unreduced benefit at that time, the full unreduced benefit amount is valued.

(3) *Example 3*—(i) *Facts.* Assume the same facts as in Example 1, except that for purposes of § 4010.8(d), the filer has decided to take pre-retirement decrements other than mortality into account as permitted under § 4010.8(d)(2)(i). For the sake of simplicity, assume the only pre-retirement decrement other than mortality is turnover. The plan's turnover rates go from age 21 to age 54, and the retirement rates go from age 55 to age 65.

(ii) *Determination of XRA.* If A terminates employment at or before age 45, A will not be eligible to receive

benefits until age 65. Therefore, the portion of Employee A that is assumed to terminate before age 45 has an ERA, URA, and XRA of 65. The portion of A that remains in service to age 45, after the application of the applicable turnover decrements, and then terminates at or after age 45, but before age 55, will be entitled to receive a reduced benefit as early as 55. Therefore, the portion of A that is assumed to terminate during this period has an ERA of 55, a URA of 65 and an XRA of 60. Since the turnover rates stop at age 55, the portion of A that remains in service to age 55 is assumed to remain in service until the XRA for that portion of A. For that portion of A, the ERA is 55, the URA is 60 and the XRA is 58. Note that for purposes of § 4010.8(d), the plan's assumed retirement rates are replaced by the XRAs.

(iii) *Determination of benefit liabilities.* The benefit liability for A is the sum of the present value of A's full accrued benefit at age 65 for the portion of A that terminates between age 40 and age 45, the present value of A's accrued benefit reduced for commencement at age 60 for the portion of A that terminates between age 45 and age 54, and the present value of A's accrued benefit reduced for commencement at age 58 for the portion of A that remains employed until age 55.

(4) *Example 4.* Assume the same facts as in Example 3, except that Employee B, the sole active participant, is age 40 with 15 years of service. The portion of B that is assumed to terminate before age 50 would be entitled to receive a reduced benefit as early as age 55 or an unreduced benefit at age 65. That portion of B has an ERA of 55, a URA of 65, and an XRA of 60. The benefit liability for that portion of B is the present value of B's benefit accrued as of the measurement date assuming B commences a reduced benefit at age 60. The portion of B that survives to age 50 would be entitled to receive an unreduced benefit as early as age 55. That portion of B has an ERA, URA and XRA of 55. The benefit liability for this portion of B is the present value of B's benefit accrued as of the measurement date assuming B retires and commences unreduced payments at age 55.

(f) *Multiple employer plans.* If, with respect to a multiple employer plan, the actuarial information required under this section 4010 for the plan year ending within the filer's information year has been filed under part 4010 by another filer, the filer may include this actuarial information by reference. The filer must include a comment in the submission reporting the name, EIN and plan number of the multiple employer plan and the name of the other filer that submitted this information. The filer is not relieved of responsibility for the filing of the actuarial information. If the information filed by the other filer is incomplete or erroneous, PBGC may assess a filing penalty against the filer.

(g) *Previous filing for plan year.* If the actuarial information for the plan year as required under this § 4010.8 has been submitted by the filer in a previous 4010 submission, the filing may include that actuarial information by reference to the previous submission.

10. In § 4010.9:

a. Paragraph (a) is amended by removing the words ''the PBGC's'' and adding in their place the word ''PBGC's''.

b. Paragraph (d) is amended by removing the words ''the PBGC'' where they appear three times and adding in their place each time the word ''PBGC''.

c. New paragraph (f) is added at the end of the section to read as follows:

§ 4010.9 Financial information.

* * * * *

(f) *Multiple employer plans.* A filer that is a contributing sponsor of a multiple employer plan need not provide financial information for another contributing sponsor of the multiple employer plan if that other contributing sponsor is not a member of the filer's controlled group.

11. Section 4010.10 is amended by removing the words ''the PBGC'' where they appear once in the section heading, once in paragraph (a), once in paragraph (b), twice in paragraph (c), twice in paragraph (d), and once in paragraph (e), and adding in their place each time the word ''PBGC''.

12. In § 4010.11:

a. The existing text of the section is redesignated as paragraph (b).

b. Redesignated paragraph (b) is amended by adding the paragraph heading ''*Other waiver authority.*''; by removing the words ''the PBGC'' where they appear three times and adding in their place each time the word ''PBGC''; by removing the word ''must'' where it appears twice and adding in its place each time the word ''should''; and by removing the words ''of this part'' where they appear twice.

c. The section heading is revised, and new paragraphs (a), (c), (d), and (e) are added, to read as follows:

§ 4010.11 Waivers, extensions, and exclusions.

(a) *Aggregate underfunding not in excess of $15 million.* Unless reporting is required by § 4010.4(a)(2) or (a)(3), reporting is waived for an information year if, for the plan years ending within the information year, the aggregate 4010 funding shortfall for all plans (including any exempt plans) maintained by the members of the contributing sponsor's controlled group (disregarding those plans with no 4010 funding shortfall) does not exceed $15 million.

* * * * *

(c) *4010 funding shortfall for waivers and exemptions*—(1) *General.* Except as provided in paragraph (c)(2) of this section, a plan's 4010 funding shortfall for a plan year equals the funding shortfall as provided under ERISA section 303(c)(4) determined as of the valuation date for the plan year, except that the value of plan assets is determined without regard to the reduction under ERISA section 303(f)(4)(b).

(2) *Transition rule for plan years beginning before 2008.* For plan years beginning before 2008, a plan's 4010 funding shortfall for a plan year equals the excess, if any, of the plan's current liability over the value of plan assets. For this purpose, both current liability and plan assets are determined in the manner provided in § 4010.4(b)(3), except that assets are not reduced by the credit balance in the funding standard account.

(3) *Multiple employer plans.* For purpose of § 4010.8(c) and paragraph (a) of this section, the entire 4010 funding shortfall of any multiple employer plan for which the filer or any member of the filers controlled group is a contributing sponsor is included.

(d) *Reduced reporting for multiple employer plans*—(1) *In general.* Reporting is waived for a contributing sponsor of a multiple employer plan if neither the contributing sponsor nor any member of the contributing sponsor's controlled group is a contributing sponsor of any other plan, provided at least one contributing sponsor (or the plan administrator on behalf of a contributing sponsor) provides a timely filing under this part 4010 containing the following information:

(i) Identifying information for each contributing sponsor of the multiple employer plan (as required under § 4010.7) determined as of the plan year ending within the contributing sponsor's information year;

(ii) Actuarial information for the multiple employer plan (as required under § 4010.8) for the plan year ending within the contributing sponsor's information year; and

(iii) Financial information as required § 4010.9 (or such reduced information as PBGC may provide on its Web site) for every contributing sponsor of the

multiple employer plan who, for a salary related plan formula, is one of the ten largest contributing sponsors based on required contributions for the plan year ending within the contributing sponsor's information year, or, for an hourly plan formula, is one of the ten largest contributing sponsors based on number of participants for the plan year ending within the contributing sponsor's information years (using the census data as determined under § 4010.8(d)(1)).

(2) *Information year.* For purposes of this paragraph (d) (including determining when a filing is due), if any two contributing sponsors report financial information on the basis of different fiscal years, the information year shall be the calendar year.

(e) *Terminated plans.* A plan may be excluded for purposes of §§ 4010.4(a)(1) and (3), 4010.8, and 4010.11(a) and (d), if, on or before the last day of the information year, all of the assets (excluding excess assets) have been distributed pursuant to a standard termination under Subpart B of part 4041 of this chapter.

§ 4010.12 [Amended]

13. Section 4010.12 is amended by removing the words ''section 4010(c) of ERISA'' and adding in their place the words ''ERISA section 4010(c)''; and by removing the words ''the PBGC'' and adding in their place the word ''PBGC''.

§ 4010.13 [Amended]

14. Section 4010.13 is amended by removing the words ''section 4071 of ERISA'' and adding in their place the words ''ERISA section 4071''; and by removing the words ''the PBGC'' where they appear twice and adding in their place each time the word ''PBGC''.

Issued in Washington, DC, this 14th day of February, 2008.

Charles E.F. Millard,

Director, Pension Benefit Guaranty Corporation.

[FR Doc. E8–3124 Filed 2–19–08; 8:45 am]

BILLING CODE 7709–01–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No.: PTO–P–2005–0027]

RIN 0651–AB99

Revision to the Time for Filing of a Biological Deposit and the Date of Availability of a Biological Deposit

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes changes to the rules of practice to require that any deposit of biological material be made before publication of a patent application, and that all restrictions on access to the deposited material imposed by the depositor be removed upon publication. The proposed changes will provide that the public has access to biological materials referenced in the disclosure of a patent application to the same extent that access to the remainder of the disclosure is available. The public policy basis for allowing access to a referenced item is the same whether the item is another patent application or a deposited biological material.

DATES: To be ensured of consideration, written comments must be received on or before April 21, 2008. No public hearing will be held.

ADDRESSES: Comments should be sent by e-mail addressed to *AB99.Comments@uspto.gov.* Comments may also be submitted by mail addressed to: Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA, 22313–1450, or by facsimile to (571) 273–7754, marked to the attention of Kathleen Kahler Fonda. Although comments may be submitted by mail or facsimile, the Office prefers to receive comments via the Internet. If comments are submitted by mail, the Office prefers that the comments be submitted on a DOS formatted 3½ inch disk accompanied by a paper copy.

Comments may also be sent by e-mail via the Federal eRulemaking Portal. See the Federal eRulemaking Portal Web site (*http://www.regulations.gov*) for additional instructions on providing comments via the Federal eRulemaking Portal.

The comments will be available for public inspection at the Office of the Commissioner for Patents, located in Madison East, Tenth Floor, 600 Dulany Street, Alexandria, Virginia, and will be available via the Office Internet Web site (address: *http://www.uspto.gov*). Because comments will be made available for public inspection, information that is not desired to be made public, such as an address or phone number, should not be included in the comments.

FOR FURTHER INFORMATION CONTACT: Kathleen Kahler Fonda, Legal Advisor, Office of the Deputy Commissioner for Patent Examination Policy, by telephone at (571) 272–7754; by mail addressed to: Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA, 22313–1450; or by facsimile to (571) 273–7754, marked to the attention of Kathleen Kahler Fonda.

SUPPLEMENTARY INFORMATION: Under 35 U.S.C. 112, first paragraph, the disclosure of a patent application must contain a written description that enables a person skilled in the art to make and use the claimed invention. The Supreme Court has consistently recognized that, in exchange for the rights associated with a patent grant, an inventor must disclose his invention in such a manner that would allow the public to make and use it without undue experimentation. *See Universal Oil Prods. Co.* v. *Globe Oil & Refining Co.,* 322 U.S. 471, 484, 61 USPQ 382, 388 (1944) (''But the quid pro quo is disclosure of a process or device in sufficient detail to enable one skilled in the art to practice the invention once the period of the monopoly has expired * * *.''); *Brenner* v. *Manson,* 383 U.S. 519, 534, 148 USPQ 689, 695 (1966) (''The basic quid pro quo contemplated by the Constitution and the Congress for granting a patent monopoly is the benefit derived by the public from an invention with substantial utility.''); *J.E.M. AG Supply, Inc.* v. *Pioneer Hi-Bred Int'l, Inc.,* 534 U.S. 124, 142, 60 USPQ2d 1865, 1873 (2001) (''The disclosure required by the Patent Act is 'the quid pro quo of the right to exclude.' '' (quoting *Kewanee Oil Co.* v. *Bicron Corp.,* 416 U.S. 470, 484, 181 USPQ 673, 679 (1974))).

The American Inventors Protection Act of 1999 (AIPA) (Title IV of the Intellectual Property and Communications Omnibus Reform Act of 1999 (S. 1948) as introduced in the 106th Congress on November 17, 1999) was incorporated and enacted into law on November 29, 1999, by 1000(a)(9), Division B, of Public Law 106–113, 113 Stat. 1501 (1999). The AIPA provided for publication of patent applications eighteen months after the earliest date for which priority benefit was sought (amending title 35 of the United States Code to add paragraph (b) to section

122). In exchange for this pre-issue public disclosure, the AIPA also provided a provisional right under 35 U.S.C. 154(d) to obtain a reasonable royalty if the invention as claimed in the published patent application is substantially identical to the invention claimed in any patent that might issue therefrom, and certain other conditions are met.

In amending 35 U.S.C. 122, Congress made it clear that only those patent application publications which provide an enabling disclosure of the claimed invention would be entitled to provisional rights under 35 U.S.C. 154(d). Although the AIPA allowed for certain applications to be published in redacted form, any redacted application was nevertheless required to contain a disclosure that would allow a person skilled in the art to make and use the subject matter of the claim. ''The provisions of section 154(d) shall not apply to a claim if the description of the invention published in the redacted application filed under this clause with respect to the claim does not enable a person skilled in the art to make and use the subject matter of the claim.'' 35 U.S.C. 122(b)(2)(B)(v). By allowing for provisional rights only where the patent publication contains an enabling disclosure, Congress again reinforced the notion that exchange for the rights associated with a patent grant an inventor must disclose his invention in such a manner that would allow the public to make and use it without undue experimentation.

When an invention involves biological material, sometimes words and drawings alone cannot sufficiently describe how to make and use it. As a supplement to the printed written description of an invention, courts have sanctioned a procedure in which biological material may be deposited with an appropriate holding facility under conditions which ensure that the sample is properly maintained, and made available to others when appropriate.

> For biological inventions, for which providing a description in written form is not practicable, one may nevertheless comply with the written description requirement by publicly depositing the biological material * * *. Such description is the quid pro quo of the patent system; the public must receive meaningful disclosure in exchange for being excluded from practicing the invention for a limited period of time.

Enzo Biochem, Inc. v. *Gen-Probe, Inc.,* 323 F.3d 956, 970, 63 USPQ2d 1609, 1617 (Fed. Cir. 2002). Internationally, the deposit of biological materials is governed by the Budapest Treaty.

The proposed rule change brings the Office practice regarding biological deposits in line with the publication of patent applications under AIPA. Courts have consistently recognized that an applicant must have provided the Office with an enabling disclosure no later than the time an invention is disclosed to the public. Prior to publication of patent applications under the AIPA, disclosure occurred simultaneously with patent issuance. Thus, earlier court decisions held that deposits needed to be perfected at the time the patent became public, i.e., at the issue date. For example, in *In re Hawkins* the court stated that ''the function of section 112 in ensuring complete public disclosure is only violated if the disclosure is not complete at the time it is made public, i.e., at the issue date.'' *In re Hawkins,* 486 F.2d 569, 574, 179 USPQ 157, 161 (CCPA 1973). In *In re Argoudelis,* the court specifically referred to the regulation concerning conditions for making a patent application public, 37 CFR 1.14, when it stated, ''The cultures are to be made available to the public upon issuance of a United States patent which refers to such deposit and prior to issuance of said patent under the conditions specified in Rule 14.'' *In re Argoudelis,* 434 F.2d 1390, 1393, 168 USPQ 99, 102 (CCPA 1970).

In the era since *Hawkins* and *Argoudelis* were decided, Congress changed the law to require that most patent applications be published eighteen months after filing, and to grant provisional rights under certain conditions. Publication of patent applications under the AIPA means that the patent issue date is no longer ''the time [the patent disclosure] is made public,'' or the time when ''the conditions of Rule 14 are met.'' At least one commentator has stated that a result of the changes brought about by the AIPA is that there is now a requirement for release of a biological deposit at publication. *See* Michelle Henderson, ''International Harmonization Brought about by the American Inventors Protection Act Compels Early Release of the Biological Deposit,'' 42 IDEA: The Journal of Law and Technology 361 (2002).

In a more recent case involving enablement supported by a biological deposit, the Federal Circuit held that ''the availability of a sample to the public after the patent has issued will meet the enablement requirement.'' *In re Lundak,* 773 F.2d 1216, 1223, 227 USPQ 90, 95 (Fed. Cir. 1985). Although on its face *Lundak* might seem to support delaying public access to a deposit until issue, *Lundak* was decided before provisional rights under the AIPA were instituted. Like the decisions in *Argoudelis* and *Hawkins,* the rule established in *Lundak* is superseded by the AIPA.

The Office did not implement a rule change requiring unrestricted access to biological deposits referenced in published patent applications at the time the patent application publication rules were put in place because a report to Congress required by the AIPA was still pending at that time. Section 4805 of the AIPA required that the Comptroller General (in consultation with the Office) conduct a study and submit a report to Congress on the potential risks to the biotechnology industry in the United States relating to release of biological material deposited in support of biotechnology patents, and that the Office consider the recommendations of such study in drafting regulations affecting deposits of biological material (including any modification of § 1.801 *et seq.*). The study required by Section 4805 of the AIPA was completed in October of 2000. *See Deposits of Biological Materials in Support of Certain Patent Applications,* GAO–01–49 (Oct. 2000). This report may be obtained: (1) By mail addressed to the Government Accountability Office, 441 G Street, NW., Washington, DC 20548; (2) by telephone at (202) 512–6000, facsimile at (202) 512–6061, or TDD (202) 512–2537; or (3) via the Government Accountability Office's Internet Web site at *http://www.gao.gov.*

The Office had previously proposed changes to § 1.809 in order to reduce delays after allowance of a patent application. *See Changes to Implement the Patent Business Goals,* 64 FR 53771 (Oct. 4, 1999), 1228 *Off. Gaz. Pat. Office* 15 (Nov. 2, 1999) (proposed rule). The GAO study did not contain any recommendations related to the Office's proposal to amend § 1.809 to revise the time period within which a deposit of biological material (if needed) must be made after allowance of an application. Accordingly, the Office has already amended § 1.809 to provide that the period of time within which the deposit must be made in order to avoid abandonment is not extendable under § 1.136(a) or (b) if set forth in a ''Notice of Allowability'' or in an Office action having a mail date on or after the mail date of a ''Notice of Allowability.'' *See Changes to the Time Period for Making any Necessary Deposit of Biological Material,* 66 FR 21090 (April 27, 2001), 1246 *Off. Gaz. Patent Office* 42 (May 22, 2001) (final rule).

As to release of the deposit before issuance of the application, the GAO study noted the concern of the

biotechnology industry that the public could obtain the deposit and reproduce the invention with minimal effort and expense, but ''found no documented cases of a person or an organization having ever obtained a sample of a biological deposit and then using it to infringe on the patent.'' GAO–01–49 at 4. Nevertheless, the report concluded that ''the statute does not require an associated release of a biological deposit concurrent with 18-month publication because even though the application may refer to the biological deposit, the deposit itself is not part of the application.'' GAO–01–49 at 5. Although no reference is provided, the report appears to be relying for support of this assertion on the CCPA's statement in *In re Argoudelis* that ''[t]he deposits are not a part of the patent application * * *.'' 434 F.2d 1390, 1394, 168 USPQ 99, 103 (CCPA 1970). The focus in *Argoudelis,* however, appears to have been on an Office position that the Office did not control the deposited material for the purpose of ensuring continued enablement, and in no way implied that the application complied with 35 U.S.C. 112 without the deposit. This passage places the quote in context:

> The only rational ground for concern on the part of the Patent Office appears to be for the permanent availability of the deposited microorganism. The deposits are not a part of the patent application, and the Patent Office exercises no control over them. This concern may be justified in some situations.

Id. at 1393–94, 168 USPQ at 103. Moreover, the *Argoudelis* court recognized that the deposit would be withheld from the public in accordance with the United States Patent Office Rules of Practice, Rule 14. *Id.* at 1391, 168 USPQ at 101 (quoting cover letter from the appellant to the depository accompanying the deposit). As a result, although the deposit was not physically within the application file, the Office's rules related to access to application files still governed access to the deposit. Thus, while the GAO's statement is true insofar as the deposit is not physically part of the application, a deposit is part of the application in the sense that an applicant's disclosure may be non-enabling or not adequately described without it.

The proposed requirement for unrestricted access to a deposited biological material upon publication of a patent application that makes reference to it will ensure that the public has the same level of access to the disclosure of an invention involving biological materials as it does to the disclosure of any other category of invention. With few limited exceptions, the patent statutes do not distinguish among different fields of endeavor. Significantly, section 122 of Title 35 does not authorize the Office to refrain from making some portion of an applicant's disclosure public simply because it is in the form of a deposit of biological material. Parity of treatment regardless of the type of invention involved has been espoused by the Federal Circuit, which stated recently that this court accords the same treatment to all forms of invention. *Eolas Techs Inc.* v. *Microsoft Corp.*, 399 F.3d 1325, 1339, 73 USPQ2d 1782, 1794 (Fed. Cir. 2005) (citing TRIPs Agreement, Part II, Section 5 (1994) (''[P]atents shall be available and patent rights enjoyable without discrimination as to the place of invention[ ][and] the field of technology * * *.'')). By providing for unrestricted access to deposited material upon publication, the Office will ensure that uniform standards for public release of a patent disclosure apply regardless of the field of the invention.

In order to ensure that the public receives a meaningful disclosure of an invention in a patent application publication, provisional rights may accrue to the patentee only if the claims in the patent are substantially identical to those in the published application. *See* 35 U.S.C. 154(d). The specification of a patent application must also comply with 35 U.S.C. 112. *See* 35 U.S.C. 111(b)(1)(A). If a deposit of biological material to comply with 35 U.S.C. 112 is necessary to preserve the availability of provisional rights under 35 U.S.C. 154(d), the disclosure of the invention must contain a specific reference to a depository accession number of the biological material, or be amended to contain such a reference in sufficient time to allow for the accession number to be included in the patent application publication. A reference to an accession number which appears in papers related to a patent application but not in the disclosure itself is not sufficient. Although application-related papers are generally made available to the public upon publication of the application, *see* § 1.14(a)(1)(ii) and (iii), such papers are not part of the disclosure of the patent or patent application publication itself. As a result, if the patent application itself is not originally filed with a reference to the accession number, a substitute specification in compliance with § 1.125(b) should be filed at least four months before the projected publication date of the patent application publication in order to ensure that the reference to the deposit is included in the patent application publication.

The Office serves as a guardian of the public interest when it examines patent applications and issues those which meet statutory requirements, including the requirement of an adequate disclosure. *See In re Russell*, 439 F.2d 1228, 1230, 169 USPQ 426, 428 (CCPA 1971) (''[T]here is a public interest in *granting* valid patents * * * .''). By instituting the proposed rule changes, the Office will ensure that patent application publication documents requiring a deposit of biological material to comply with the disclosure requirements of 35 U.S.C. 112, first paragraph, will be fully available as prior art as of the date of publication. If a patent application publication does not comply with the disclosure requirements of 35 U.S.C. 112, first paragraph, as of its publication date, the patent application publication cannot serve as anticipatory prior art under 35 U.S.C. 102(a) and (b), and possibly (e). *See Elan Pharms., Inc.* v. *Mayo Found. for Med. Educ. & Research*, 346 F.3d 1051, 1054, 68 USPQ2d 1373, 1375 (Fed. Cir. 2003) (''To serve as an anticipating reference, the reference must enable that which it is asserted to anticipate.'') (quoting *Amgen, Inc.* v. *Hoechst Marion Roussel, Inc.*, 314 F.3d 1313, 1354, 65 USPQ2d 1385, 1416 (Fed. Cir. 2003) (''A claimed invention cannot be anticipated by a prior art reference if the allegedly anticipatory disclosures cited as prior art are not enabled.''); *Bristol-Myers Squibb* v. *Ben Venue Labs., Inc.,* 246 F.3d 1368, 1374, 58 USPQ2d 1508, 1512 (Fed. Cir. 2001) (''To anticipate, the reference must also enable one of skill in the art to make and use the claimed invention.''); *PPG Indus., Inc.* v. *Guardian Indus. Corp.*, 75 F.3d 1558, 1566, 37 USPQ2d 1618, 1624 (Fed. Cir. 1996) (''To anticipate a claim, a reference must disclose every element of the challenged claim and enable one skilled in the art to make the anticipating subject matter.'').

Absent a requirement for deposit prior to publication coupled with release of the deposited material upon publication, an otherwise anticipatory patent application publication could fail to qualify as prior art. It is not in the public interest to allow arbitrariness in the date of deposit to disqualify a patent application publication as prior art, when the publication otherwise fully discloses an invention. The proposed rule changes take steps to ensure that patent application publications will be available as prior art as of their publication date, and can therefore be used to prevent issuance of patents which do not represent a contribution to

public knowledge. *See Constant* v. *Advanced Micro-Devices, Inc.,* 848 F.2d 1560, 1564, 7 USPQ2d 1057, 1059 (Fed. Cir. 1988) (''Public policy requires that only inventions which fully meet the statutory standards are entitled to patents.'').

A requirement for deposit of the biologic material prior to publication would be a significant step toward harmonizing United States practice with that of the European Patent Office (EPO). The proposed rules require that a deposit necessary for compliance with 35 U.S.C. 112 be made before technical preparations for publication of the application as a patent application publication have begun, whereas in Europe any deposit necessary for compliance with the disclosure requirement of Article 83 of the European Patent Convention (EPC) must have been made at or before filing. EPC Rule 28(1)(a). Thus the timing requirements for deposits are not identical, and even under the proposed rules it would remain the case that an EP application risks losing benefit of a United States priority application unless the deposit had been made at or before filing in the United States. However, under the proposed changes to § 1.809(e), as well as under EPC Rule 28(2)(a), an amendment to a patent application to make reference to a deposit must be made in sufficient time so that the reference will be included in the patent application publication. Thus members of the interested public, for both U.S. applications and those filed in the EPO, will be informed of the existence of the deposited material and be able to request its release upon publication at eighteen months.

Discussion of Specific Rules

Title 37 of the Code of Federal Regulations, Part 1, is proposed to be amended as follows:

Section 1.77: Section 1.77 is proposed to be amended by revising paragraph (b)(1) to delete '', which may be accompanied by an introductory portion stating the name, citizenship, and residence of the applicant (unless included in the application data sheet),'' by redesignating paragraphs (b)(6) through (b)(12) as paragraphs (b)(7) through (b)(13), adding a new paragraph (b)(6), and revising paragraph (c). Having the name, citizenship and residence of each applicant on the title page suggests that such information should be changed if the information changes, and to avoid any need for an amendment, this information should not be included on the title page. New paragraph (b)(6) would provide a section heading for a reference to a deposit of biological material. Paragraph (c) is proposed to be revised to refer to paragraph (b) in general rather than each of the numbered paragraphs of (b) so that if paragraph (b) is amended in the future, no amendments would be required to paragraph (c).

Section 1.163: Section 1.163 is amended by revising paragraph (c)(1) to delete '', which may include an introductory portion stating the name, citizenship, and residence of the applicant,'' redesignating paragraphs (c)(6) through (c)(11) as paragraphs (c)(7) through (c)(12), and adding a new paragraph (c)(6) to provide a section heading for a reference to a deposit of biological material.

Section 1.804: Section 1.804 is proposed to be amended to provide that if a biological material is necessary to preserve the availability of provisional rights under 35 U.S.C. 154(d), the deposit of the biological material must be made prior to filing an application or during the pendency of an application, provided that the deposit is made before technical preparations for publication of the application as a patent application publication have begun (*see* § 1.215(a)).

Section 1.808: Section 1.808(a)(1) is proposed to be amended to change ''122'' to ''122(a)'' and to make grammatical corrections. Section 1.808(a)(2) is proposed to be amended to provide that all restrictions imposed by the depositor will be irrevocably removed upon the earlier of publication of the application under § 1.211 and 35 U.S.C. 122(b) or grant of the patent, and to indicate that the rule applies regardless of whether the deposit was made to satisfy a statutory provision.

Section 1.808(b) is amended to add ''before the patent is granted or'' before ''term of the patent.''

Section 1.808(c) is amended to provide that the Office will, on request, certify that an application referring to the deposit has been filed, that the subject matter of that application involves the deposited biological material or the use thereof, that the application has been published or patented or is otherwise open to public inspection, and that the requesting party has a right to a sample of the biological material. This is the certification called for in Rule 11.3 of the Regulations Under the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure. A form, BP/12, is provided on the World Intellectual Property Organization's Internet Web site (*http://www.wipo.int*) for this purpose.

Section 1.808(c)(3) is also proposed to be revised to require the application number referring to the deposit, as well as either the patent application publication number and publication date, or the patent number and issue date of the patent, instead of only the patent number and issue date.

Section 1.809: Section 1.809(a) is proposed to be amended to clarify that the examiner's rejection may be under any appropriate statutory provision.

Section 1.809(b)(1) is proposed to be amended to delete ''either'' and '', or assuring the Office in writing that an acceptable deposit will be made.'' Section 1.809(b)(2) is proposed to be amended to delete the text after ''nonresponsive'' and to insert in place thereof ''A request to hold the making of the deposit in abeyance will not be considered a bona fide attempt to advance the application to final action (§ 1.135(c)).''

Section 1.809(c) is proposed to be amended to delete ''and the Office has received a written assurance that an acceptable deposit will be made.''

Section 1.809(e) is proposed to be amended to delete ''before or with the payment of the issue fee (*see* § 1.312)'' and to insert ''(1) within a period of sixteen months after the date of filing of the application or, if the benefit of an earlier filing date is sought under 35 U.S.C. 119(e), 120, 121, or 365(c), within the later of four months of the actual filing date of the later-filed application and sixteen months from the filing date of the prior-filed application; and (2) before or with any request for early publication (§ 1.219).'' Of course, § 1.312 continues to apply, and the amendment cannot be filed after payment of the issue fee. By providing that the amendment should be filed at a set time related to publication of the application, the application should be published with the required deposit information.

Rulemaking Considerations

Administrative Procedure Act: This notice does not propose to add any new fees or new requirements to the rules of practice. Rather, this notice proposes to change the time period for compliance with existing requirements of the rules of practice in 37 CFR 1.801 *et seq.* Therefore, the changes proposed in this notice involve only rules of agency practice and procedure under 5 U.S.C. 553(b)(B). *See Bachow Communications Inc.* v. *FCC*, 237 F.3d 683, 690 (DC Cir. 2001) (rules governing an application process are ''rules of agency organization, procedure, or practice'' and are exempt from the Administrative Procedure Act's notice and comment requirement) and *JEM Broadcasting Co.* v. *FCC*, 22 F.3d 320, 327 (DC Cir. 1994)

(rule under which any flawed application is summarily dismissed without allowing the applicant to correct its error is merely procedural despite its sometimes harsh effects on applicants); *see also Fressola* v. *Manbeck*, 36 USPQ2d 1211, 1215 (D.D.C. 1995) (''it is extremely doubtful whether any of the rules formulated to govern patent or trade-mark practice are other than 'interpretive rules, general statements of policy, * * * procedure, or practice.' '') (quoting C.W. Ooms, *The United States Patent Office and the Administrative Procedure Act*, 38 Trademark Rep. 149, 153 (1948)). Accordingly, prior notice and opportunity for public comment are not required pursuant to 5 U.S.C. 553(b) or (c) or any other law. Nevertheless, the Office is seeking public comment on proposed changes to these rules of practice to obtain the benefit of such input.

Regulatory Flexibility Act: As prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553 (or any other law), neither an initial regulatory flexibility analysis nor a certification under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are required. *See* 5 U.S.C. 603. Nevertheless, for the reasons set forth herein, the Deputy General Counsel for General Law of the United States Patent and Trademark Office has certified to the Chief Counsel for Advocacy of the Small Business Administration that the changes proposed in this notice will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 605(b).

The principal impacts of the changes proposed in this notice are changes to the rules of practice to: (1) Require that any deposit of biological material be made before publication of a patent application; and (2) provide that all restrictions on access to the deposited material imposed by the depositor be removed upon publication. The Office estimates that there are approximately 1,000 patent applications filed each year (both small entity and other than small entity) that are supplemented (either on filing or later) by a deposit of biological material. This notice does not propose any new fees or new requirements for such applications, but is simply proposing to change the time period for compliance with existing requirements of the rules of practice to ensure that the public has access to biological materials referenced in the disclosure of a patent application to the same extent that access to the remainder of the disclosure is available. Therefore, the changes proposed in this notice will not have a significant economic impact on a substantial number of small entities.

Executive Order 13132: This rule making does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

Executive Order 12866: This rule making has been determined to be significant for purposes of Executive Order 12866 (Sept. 30, 1993).

Paperwork Reduction Act: This notice involves information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The collections of information involved in this notice have been reviewed and previously approved by OMB under OMB control numbers 0651–0022 and 0651–0032. The United States Patent and Trademark Office is not resubmitting any information collection package to OMB for its review and approval because the changes in this notice do not affect the information collection requirements associated with the information collection under these OMB control numbers. The principal impacts of the changes proposed in this notice are changes to the rules of practice to: (1) Require that any deposit of biological material be made before publication of a patent application; and (2) provide that all restrictions on access to the deposited material imposed by the depositor be removed upon publication.

Interested persons are requested to send comments regarding these information collections, including suggestions for reducing this burden, to Robert A. Clarke, Director, Office of Patent Legal Administration, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450, or to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Officer for the Patent and Trademark Office.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Inventions and patents, Lawyers.

For the reasons set forth in the preamble, 37 CFR part 1 is proposed to be amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR part 1 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2).

2. Section 1.77 is amended by redesignating paragraphs (b)(6) through (b)(12) as paragraphs (b)(7) through (b)(13), adding a new paragraph (b)(6), and revising paragraphs (b)(1) and (c) to read as follows:

§ 1.77 Arrangement of application elements.

* * * * *

(b) * * *

(1) Title of the invention.

* * * * *

(6) Reference to a deposit of biological material.

* * * * *

(c) The text of the specification sections defined in paragraph (b) of this section, if applicable, should be preceded by a section heading in uppercase and without underlining or bold type.

3. Section 1.163 is amended by redesignating paragraphs (c)(6) through (c)(11) as paragraphs (c)(7) through (c)(12), revising paragraph (c)(1), and adding a new paragraph (c)(6) to read as follows:

§ 1.163 Specification and arrangement of application elements in a plant application.

* * * * *

(c) * * *

(1) Title of the invention.

* * * * *

(6) Deposit of biological material.

* * * * *

4. Section 1.804 is amended by revising paragraph (a) to read as follows:

§ 1.804 Time of making an original deposit in order to preserve availability of provisional rights under 35 U.S.C. 154(d).

(a) If deposit of a biological material is necessary to preserve the availability of provisional rights under 35 U.S.C. 154(d), an original deposit of the biological material must be made either before the application is filed or during pendency of the application provided that the deposit is made before technical preparations for publication of the application as a patent application publication have begun (see § 1.215(a)).

* * * * *

5. Section 1.808 is revised to read as follows:

§ 1.808 Furnishing of samples.

(a) A deposit must be made under conditions that assure that:

(1) Access to a deposit will be available during pendency of a patent application making reference to the deposit to one determined by the Director to be entitled thereto under § 1.14 and 35 U.S.C. 122(a), and

(2) Subject to paragraph (b) of this section, all restrictions imposed by the depositor on the availability to the public of the deposited material will be irrevocably removed upon the earlier of publication of the application under § 1.211 and 35 U.S.C. 122(b) or grant of the patent, and any deposit referenced in a patent application publication or patent will be available to the public upon publication or patenting, regardless of whether the deposit was necessary for compliance with any statutory provision.

(b) The depositor may contract with the depository to require that samples of a deposited biological material shall be furnished only if a request for a sample, before the patent is granted or during the term of the patent:

(1) Is in writing or other tangible form and dated;

(2) Contains the name and address of the requesting party and the accession number of the deposit; and

(3) Is communicated in writing by the depository to the depositor along with the date on which the sample was furnished and the name and address of the party to whom the sample was furnished.

(c) Upon request made to the Office, the Office will certify that an application referring to the deposit has been filed and that the subject matter of that application involves the deposited biological material or the use thereof, that the application has been published or patented or is otherwise open to public inspection, and the certified party has a right to a sample of the biological material, provided the request contains:

(1) The name and address of the depository;

(2) The accession number given to the deposit;

(3) The application number referring to the deposit and any patent application publication number and publication date, or patent number and issue date of the patent; and

(4) The name and address of the requesting party.

6. Section 1.809 is amended by revising paragraphs (a), (b), (c), and (e) to read as follows:

§ 1.809 Examination procedures.

(a) The examiner shall determine pursuant to § 1.104 in each application for patent, application for reissue patent or reexamination proceeding if a deposit is needed, and if needed, if a deposit actually made is acceptable for patent purposes. If a deposit is needed and has not been made or replaced or supplemented in accordance with these regulations, the examiner, where appropriate, shall reject the affected claims under the appropriate statutory provision, explaining why a deposit is needed and/or why a deposit actually made cannot be accepted.

(b) The applicant for patent or patent owner shall reply to a rejection under paragraph (a) of this section by:

(1) In the case of an applicant for patent, making an acceptable original, replacement, or supplemental deposit; or, in the case of a patent owner, requesting a certificate of correction of the patent which meets the terms of paragraphs (b) and (c) of § 1.805, or

(2) Arguing why a deposit is not needed under the circumstances of the application or patent considered and/or why a deposit actually made should be accepted. Other replies to the examiner's action shall be considered nonresponsive. A request to hold the making of the deposit in abeyance will not be considered a bona fide attempt to advance the application to final action (§ 1.135(c)).

(c) If an application for patent is otherwise in condition for allowance except for a needed deposit, applicant will be notified and given a period of time within which the deposit must be made in order to avoid abandonment. This time period is not extendable under § 1.136(a) or (b) if set forth in a ''Notice of Allowability'' or in an Office action having a mail date on or after the mail date of a ''Notice of Allowability'' (see § 1.136(c)).

* * * * *

(e) An amendment required by paragraphs (d)(1), (d)(2) or (d)(4) of this section for a biological deposit that is necessary to preserve provisional rights under 35 U.S.C. 154(d) must be filed:

(1) Within a period of sixteen months after the date of filing of the application or, if the benefit of an earlier filing date is sought under 35 U.S.C. 119(e), 120, 121, or 365(c), within the later of four months of the actual filing date of the later-filed application and sixteen months from the filing date of the of the prior-filed application; and

(2) Before or with any request for early publication (§ 1.219).

Dated: February 13, 2008.

Jon W. Dudas,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. E8–3084 Filed 2–19–08; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2007–0633; A–1–FRL–8517–5]

Approval and Promulgation of Air Quality Implementation Plans; Maine; Conformity of General Federal Actions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Maine for the purpose of making the SIP consistent with recent additions to the Federal general conformity regulation. This revision incorporates by reference new definitions and establishes de minimis emission levels for fine particular matter ($PM_{2.5}$) into Maine's existing general conformity criteria and procedures previously approved into the Maine SIP.

DATES: Written comments must be received on or before March 21, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–OAR–2007–0633 by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *E-mail: arnold.anne@epa.gov.*

3. *Fax:* (617) 918–0047.

4. *Mail:* ''EPA–R01–OAR–2007–0633'', Anne Arnold, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (mail code CAQ), Boston, MA 02114–2023.

5. *Hand Delivery or Courier. Deliver your comments to:* Anne Arnold, Manager, Air Quality Planning Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, (CAQ), Boston, MA 02114–2023. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

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

FOR FURTHER INFORMATION CONTACT: Donald O. Cooke, Air Quality Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (CAQ), Boston, MA 02114–2023, telephone number (617) 918–1668, fax number (617) 918–0668, e-mail *cooke.donald@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules Section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule which is located in the Rules Section of this **Federal Register.**

Dated: January 9, 2008.

Robert W. Varney,

Regional Administrator, EPA New England.

[FR Doc. E8–2883 Filed 2–19–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2007–0150–200711(b); FRL–8528–7]

Approval and Promulgation of Implementation Plans for Air Quality Planning Purposes; Georgia: Early Progress Plan for the Atlanta 8-Hour Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On December 31, 2006, the State of Georgia, through the Environmental Protection Division of the Georgia Department of Natural Resources, submitted a voluntary State Implementation Plan (SIP) revision requesting approval of an Early Progress Plan for the sole purpose of establishing motor vehicle emission budgets (MVEBs) for the Atlanta 8-hour ozone nonattainment area. The Atlanta 8-hour ozone nonattainment area is comprised of the following twenty counties: Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Hall, Henry, Newton, Paulding, Rockdale, Spalding and Walton counties in their entireties (hereafter referred to as the ''Atlanta 8-Hour Ozone Area''). EPA is proposing to approve Atlanta's Early Progress Plan, including the new regional MVEBs for nitrogen oxides and volatile organic compounds for 2006. This proposed approval of the Early Progress Plan for the Atlanta 8-Hour Ozone Area is based on EPA's determination that Georgia has demonstrated that the SIP revision containing these MVEBs, when considered with the emissions from all sources, shows some progress toward attainment from the base year (i.e., 2002) through an interim target year (i.e., 2006). In the Final Rules Section of this **Federal Register**, EPA is approving the SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no significant, material, and adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before March 21, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2007–0150, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: Benjamin.lynorae@epa.gov.*
3. *Fax:* (404) 562.9019.
4. *Mail:* EPA–R04–OAR–2007–0150, Air Quality Modeling and Transportation Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Lynorae Benjamin, Air Quality Modeling and Transportation Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

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

FOR FURTHER INFORMATION CONTACT: Lynorae Benjamin, Air Quality Modeling and Transportation Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9040. Ms. Benjamin can also be reached via electronic mail at *Benjamin.lynorae@epa.gov*.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule which is published in the Rules Section of this **Federal Register**.

Dated: February 6, 2008.

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

[FR Doc. E8–2709 Filed 2–19–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2007–0122; FRL–8528–6]

Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to correct our May 2004 final approval of revisions to the San Joaquin Valley Unified Air

Pollution Control District (SJVUAPCD or ''District'') portion of the California State Implementation Plan (SIP). We are also proposing to approve two 2006 revisions to these rules that the California Air Resources Board submitted to EPA in December 2006. Our correction to our May 2004 approval and our proposed approval of the District's 2006 revisions conform the District's rules to a State law generally known as Senate Bill 700 by explicitly limiting the applicability of new source permitting requirements to certain minor sources and limiting the applicability of offset requirements for all minor agricultural sources consistent with criteria identified in state law. We are proposing to correct our May 2004 final approval pursuant to section 110(k)(6) of the Clean Air Act (CAA or ''Act''). We are proposing to approve the District's 2006 revisions of the local rules into the SIP pursuant to section 110(k)(2) of the Act.

DATES: Any comments must arrive by March 21, 2008.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2007–0122, by one of the following methods:

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

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

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

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

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

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I. Correction of EPA's May 2004 Final Approval

A. CAA Legal Authority

Section 110(k)(6) of the Clean Air Act, as amended in 1990, provides: ''Whenever the Administrator determines that the Administrator's action approving, disapproving, or promulgating any plan or plan revision (or part thereof), area designation, redesignation, classification or reclassification was in error, the Administrator may in the same manner as the approval, disapproval, or promulgation revise such action as appropriate without requiring any further submission from the State. Such determination and the basis thereof shall be provided to the State and the public.''

We interpret this provision to authorize the Agency to make corrections to a promulgated regulation when it is shown to our satisfaction (or we discover) that (1) we clearly erred by failing to consider or by inappropriately considering information made available to EPA at the time of the promulgation, or the information made available at the time of promulgation is subsequently demonstrated to have been clearly inadequate, and (2) other information persuasively supports a change in the regulation. See 71 FR 75690, at 75693 (December 18, 2006); 57 FR 56762, at 56763 (November 30, 1992).

B. Background on California's and SJVUAPCD's SIPs

The regulatory history of permitting agricultural sources in California is relevant to our evaluation of the error we made in our May 2004 final approval of the District's new source review (NSR) permitting rules. In 1970, the California legislature enacted a law that was codified as California Health & Safety Code (CH&SC) section 24265(e). CH&SC section 24265(e) exempted all agricultural sources from District permitting requirements. Specifically, CH&SC section 24265(e) provided that a District permit shall not be required for equipment used in agricultural operations in the growing of crops or raising of fowls or animals except for certain orchard or citrus grove heaters in Southern California.[1]

On February 21, 1972, pursuant to the Clean Air Amendments of 1970, Governor Ronald Reagan submitted the original California State Implementation Plan (SIP) to EPA. The original SIP included ''Chapter 7—Legal Considerations'' to demonstrate adequate legal authority to implement and enforce SIP requirements. Chapter 7 of the original SIP discusses the respective authorities of the California Air Resources Board and the local air districts. Specifically, the narrative included as Chapter 7 cites CH&SC section 24263 as a basis for the authority of local air districts to operate permit systems but does not specifically cite the permitting exemptions found in CH&SC section 24265. California submitted many provisions of the CH&SC including specific provisions cited in the narrative, such as section 24263, as well as provisions that were not specifically cited, such as section 24265, as appendix II to the original SIP. Later that same year, and with certain exceptions not relevant here, EPA took action to approve the original SIP. See 37 FR 10842 (May 31, 1972).

The California SIP has been revised many times, and on March 16, 1979, the

[1] In this instance, Southern California is defined as including all counties, any part of which lie south of the Sixth Standard Parallel South, Mount Diablo Base and Meridian. Within the SJVUAPCD, only Kern County lies south of the Sixth Standard Parallel South.

Governor's designee, the California Air Resources Board (CARB), submitted a revision to the SIP referred to as ''Chapter 3—Legal Authority, Revision to State of California Implementation Plan for the Attainment and Maintenance of Ambient Air Quality Standards (December 1978).'' By 1979, CH&SC section 24265(e) had been re-codified as CH&SC section 42310(e). Similar to the 1972 original SIP, CARB's 1979 submittal includes a narrative that generally describes, among many other topics, the authority of local air districts to issue permits to stationary sources but that does not specifically cite exemptions to District permitting (then codified under CH&SC section 42310). The 1979 submittal incorporates CH&SC provisions as appendix 3–A to chapter 3, but, unlike the 1972 SIP, California did not physically include the actual CH&SC provisions with the 1979 submittal, but indicated that the code was available separately from the ARB Public Information Office. We described CARB's 1979 submittal of ''Chapter 3—Legal Authority'' as an updating and clarification of the 1972 SIP. See 44 FR 38912 (July 3, 1979). The following year, we finalized our proposed approval of the March 16, 1979 submittal of ''Legal Authority.'' See 45 FR 53136 (August 11, 1980).

In addition, individual California air pollution control districts subsequently submitted (through CARB) local permitting rules for EPA to approve into the SIP. Some district permitting rules, such as those submitted by SJVUAPCD, explicitly exempted agricultural sources from the NSR permitting rules, consistent with and generally citing to CH&SC section 42310(e). Prior to the late 1990's, EPA had approved such exemptions into SIP NSR permitting rules, including the SIP NSR rules for the county APCDs that now comprise the region-wide SJVUAPCD.

CARB submitted a revised version of SJVUAPCD NSR permitting rules, Rules 2020 and 2201, to EPA for SIP approval in 1998. On July 19, 2001, EPA finalized a limited approval and limited disapproval of revised SJVUAPCD Rules 2020 and 2201. See 66 FR 37587 (July 19, 2001). EPA's limited disapproval was based, in part, on Rule 2020's exemption of agricultural sources, which was identical to and referenced CH&SC section 42310(e). Our limited disapproval stated that SJVUAPCD could not exempt major stationary sources or major modifications at existing major sources from NSR requirements.[2]

To correct the deficiency in Rule 2020 leading to EPA's July 2001 limited disapproval, SJVUAPCD adopted and submitted a revision to Rule 2020 which eliminated the agricultural exemption in its entirety from the District rules. SJVUAPCD submitted the revised Rule 2020 to EPA on December 23, 2002.

On February 13, 2003, EPA proposed several actions regarding the exemption of agricultural sources from major source NSR permitting requirements. First, EPA proposed approval of revised Rule 2020 completely deleting the permit exemption for agricultural sources from the District rules. See 68 FR 7330 (February 13, 2003).[3] In that notice, EPA specifically noted that ''California Health & Safety Code 42310(e) continues to preclude the District, as well as all other districts in California, from permitting agricultural sources under either title I or title V of the CAA.'' See 68 FR 7330, at 7335. To address this issue, EPA published a proposal finding that California's statutory exemption of agricultural sources in CH&SC section 42310(e) from major source NSR permitting rules violated the requirements of CAA section 110(a)(2)(E). See 68 FR 7327 (February 13, 2003). This action, titled ''Finding of Substantial Inadequacy of Implementation Plan; Call for California State Implementation Plan Revision'' (hereinafter ''SIP Call''), determined that California lacked adequate legal authority to carry out its NSR permitting requirements because CH&SC section 42310(e) exempted major agricultural sources. EPA finalized the SIP Call on June 25, 2003, and thereby required California to submit the necessary assurances of authority by November 23, 2003 to support an affirmative finding by EPA under CAA section 110(a)(2)(E). If the State failed to submit the necessary assurances, then EPA indicated that the sanctions clock under CAA section 179 would be triggered.[4] See 68 FR 37746 (June 25, 2003).

Later that summer, the California legislature enacted Senate Bill (SB) 700, which the Governor of California signed on September 22, 2003. SB 700 removed the wholesale exemption from permitting for agricultural sources provided under CH&SC section 42310(e) and subjected major agricultural sources to permitting requirements. SB 700, however, retained exemptions for new source permitting for certain minor agricultural sources, and limited the ability to require minor agricultural sources to obtain federal offsets.[5] California notified EPA of the legislature's action by letter dated November 3, 2003 thereby avoiding the triggering of a sanctions clock. California enclosed a copy of SB 700 with the November 3, 2003 letter.[6]

On May 17, 2004, EPA took final action approving SJVUAPCD's permitting rules, Rule 2020 and 2201, as proposed in February 2003. See 69 FR 27837 (May 17, 2004). These rules, as approved by EPA, did not on their face exempt any agricultural sources from permitting or limit the applicability of offset requirements. EPA's final approval stated that the District had removed its exemption for agricultural sources and that the state had also ''removed a similar blanket exemption, thereby providing the District with authority to require air permits for agricultural sources, including federally required NSR permits.'' See 69 FR 27837, at 27838. EPA's final approval cited SB 700 in a footnote, but did not note the limited scope of authority for permitting and offset requirements under SB 700, which allowed permitting of only certain minor agricultural sources. Whether or not EPA's SIP actions in 1972 or 1979 approved the statutory provision

[2] SJVUAPCD NSR permitting rules do not adopt the distinction between minor sources and major sources as set forth under the CAA. SJVUAPCD Rules 2201 and 2020 generally apply to both federal minor and major stationary sources. Our limited approval specified that the rule deficiency was exempting major agricultural sources and major modifications. See 65 FR 58252, at 58254 (September 28, 2000).

[3] EPA also published an Interim Final Determination that SJVUAPCD had corrected the July 2001 limited approval deficiencies and EPA stayed or deferred the imposition of CAA sanctions on the District. See 68 FR 7321.

[4] On May 22, 2002, EPA issued a Notice of Deficiency for California's Title V program based on the exemption of agricultural sources from Title V permitting. See 67 FR 35990 (May 22, 2002). EPA's decision was upheld. See *California Farm Bureau Fed'n* v. *EPA,* No. 02–73371 (9th Cir. July 15, 2003) (memorandum opinion).

[5] As explained in Section II.C below, sources with emissions below 50 percent of the major source threshold are exempt from permitting unless the District makes certain findings, while sources at or above 50 percent of the major source threshold are subject to permitting unless the District makes certain findings. See CH&SC section 42301.16 (b) and (c). In addition, offsets may not be required unless they meet the criteria for real, permanent, quantifiable, and enforceable emission reductions. See CH&SC section 42301.18(c).

It is worth noting that EPA and California interpret CH&SC section 42301.16(a) to require all sources that emit or have the potential to emit at or above the major source threshold to be subject to new source permitting and offset requirements, as required by the Clean Air Act, without regard to the provisions of sections 42301.16(c) or 42301.18(c). Thus, an agricultural source with actual emissions less than 50 percent of the major source threshold but potential emissions above the major source threshold is subject to new source permitting and offset requirements.

[6] See Letter from Bill Lockyer, Attorney General, California Office of the Attorney General, to Marianne Horinko, Acting Administrator, EPA, dated November 3, 2003.

exempting agricultural sources from permitting (i.e., CH&SC section 24265(e), recodified as CH&SC section 42310(e)) as part of the California SIP, it is clear that as of the promulgation of our May 2004 final rule there is no exemption from permitting for agricultural sources derived from the statutory provision within the SJVUAPCD portion of the SIP.

C. Correction of Erroneous Final Approval

In this instance, we believe that our May 2004 final full approval of Rules 2020 and 2201 was erroneous. For all SIP revisions, States must provide evidence that the State has the necessary legal authority under State law to adopt and implement the plan. See CAA section 110(a)(2)(E); 40 CFR part 51, appendix V, section 2.1(c). Thus, to support the approval CARB was required in December 2002 to provide evidence that SJVUAPCD had the necessary legal authority under State law to implement Rules 2020 and 2201, which purported to require permits and offsets for all agricultural sources. CARB could not have done so because CH&SC section 42310(e), applicable at that time, continued to preclude such authority under State law with respect to all agricultural sources.

Nonetheless, we proposed to fully approve Rules 2020 and 2201 on February 13, 2003, with the expectation that the California legislature would act to remove CH&SC section 42310(e)'s exemption for agricultural sources thereby aligning Rule 2020 with District authority under State law. 68 FR 7330 (Feb. 13, 2003). While the legislature did act shortly thereafter to remove the exemption for major agricultural sources and major modifications at existing major agricultural sources, the legislature also retained the exemption from permitting for certain minor agricultural sources, leaving the words of Rule 2020 broader than the District's authority under State law. The legislature also exempted minor agricultural sources from obtaining offsets pending a determination that emissions reductions from such sources meet certain criteria, leaving Rule 2201, on its face, also at odds with State law.

We now understand that our final approval action on Rules 2020 and 2201 should have ensured that the authority in those rules was consistent with the authority granted by SB 700. In other words, we should have limited our approval of Rule 2020 to exclude applicability to agricultural sources exempt from new source permitting under SB 700 (i.e., minor sources with emissions less than 50 percent of the major source threshold absent findings, or minor sources over 50 percent of that threshold with findings). Our approval of Rule 2201 should have been limited to provisions requiring offsets for major agricultural sources and for minor sources when the listed criteria were satisfied. Given that California submitted a copy of SB 700 in November 2003, we had information indicating that the District did not have the authority to implement Rules 2020 and 2201 to the extent that the language of the rule appeared to allow (i.e., to require permits and offsets from all new or modified agricultural sources, including those exempt under SB 700) prior to the time we took final action. We should have limited our approval of Rules 2020 and 2201 to conform with SB 700, and promulgated language in 40 CFR part 52 codifying that limitation on our approval.

We note that recent enforcement actions have been brought pursuant to the CAA's citizen suit provisions against minor agricultural sources in SJVUAPCD that have emissions less than 50 percent of the major source threshold for failure to apply for and receive a new or modified source permit. SJVUAPCD, however, does not have the authority under State law to issue such permits. The fact that such cases are being brought (and one case has been brought successfully (see *Assoc. of Irritated Residents* v. *C & R. Vanderham Dairies,* 2007 U.S. Dist. 70890 (E.D. Cal., Sept. 24, 2007)) persuasively supports the need to correct our error in approving Rules 2020 and 2201 in 2004.

Therefore, pursuant to CAA section 110(k)(6), we are proposing to correct our error by limiting our approval of Rules 2020 and 2201 to apply only to the extent the District has authority under state law to require permits and offsets. Specifically, with respect to agricultural sources, we are approving Rule 2020 only to the extent it applies to agricultural sources subject to permitting under SB 700. Also and again with respect to agricultural sources, we are approving Rule 2201 only to the extent it requires offsets for new major sources and major modifications until certain criteria set forth in State law are met. To codify this proposed error correction, we are proposing the following language to be added as a new section, 52.245, of 40 CFR part 52, subpart F (''California''):

52.245 New Source Review Rules

(a) Approval of the New Source Review rules for the San Joaquin Valley Unified Air Pollution Control District Rules 2020 and 2201 as approved May 17, 2004, is limited, as it relates to agricultural sources, to apply the permit requirement only (1) to agricultural sources with actual or potential emissions at or above a major source applicability threshold and (2) to agricultural sources with actual emissions at or above 50 percent of a major source applicability threshold. The District has the authority to permit or exempt from permitting minor agricultural sources upon making the findings prescribed in CH&SC 42301.16 (b) and (c). The offset requirement, as it relates to agricultural sources, does not apply to new minor agricultural sources and minor modifications to such sources if emissions reductions from that source would not meet the criteria for real, permanent, quantifiable, and enforceable emission reductions.

This document simultaneously proposes to approve revised language into Rules 2020 and 2201 that conforms the rules to the authority provided in SB 700. If we take final action to approve the revised rules at the same time as we take final action on our proposed correction, then the draft regulatory language set forth above will not be codified because it will be superceded by the revised language submitted by the District.

II. The State's Submittal of Its 2006 Revisions

A. What revisions did the State submit?

Table 1 lists the rules we are proposing to approve with the dates that they were revised by SJVUAPCD and submitted to EPA by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES PROPOSED FOR FULL APPROVAL

Local agency	Rule No.	Rule title	Amended	Submitted
SJVUAPCD	2020 paragraph 6.20 only	Exemptions	09/21/06	12/29/06
SJVUAPCD	2201, paragraph 4.6.9 only	New and Modified Stationary Source Review Rule	09/21/06	12/29/06

On June 29, 2007, the submittal of Rule 2020, paragraph 6.20, and Rule 2201, paragraph 4.6.9, was deemed by operation of law to have met the completeness criteria in 40 CFR part 51 appendix V, which must be met before formal EPA review.

B. Are there other versions of these rules?

As discussed above, we approved a version of Rule 2020 into the SIP on May 17, 2004 (69 FR 27837). In today's action, we have determined that the approval was erroneous to the extent it required sources exempted from permitting under SB 700 (i.e. sources less than 50 percent of the major source threshold) to obtain permits. We also approved a version of Rule 2201 into the SIP on May 17, 2004 (69 FR 27837), although we have determined the approval was erroneous to the extent it required offsets barred by SB 700. The versions of Rules 2020 and 2201 that we approved in 2004 did not include provisions equivalent to those now included in paragraph 6.20 of Rule 2020 or paragraph 4.6.9 of Rule 2201.

Prior to our 2004 approval of Rules 2020 and 2201, the SJVUAPCD portion of the California SIP included a broad exemption from permitting for all agricultural sources, citing CH&SC section 42310(e). See section 4.0 of SJVUAPCD rule 2020, as amended on September 17, 1998, submitted on October 27, 1998, and approved on July 19, 2001 at 66 FR 37587.

C. What is the purpose of the submitted rule revisions?

Section 110(a) of the CAA requires states to submit regulations that control volatile organic compounds, nitrogen oxides, particulate matter, and other air pollutants which harm human health and the environment. Permitting rules were developed as part of the local air district's programs to control these pollutants.

The purpose of the addition of paragraph 6.20 to SIP Rule 2020 is as follows:

• This paragraph conforms District permit requirements to State law by explicitly exempting agricultural sources to the extent such sources are exempt pursuant to CH&SC section 42301.16. Section 42301.16(a) requires local air permitting authorities to require permits for agricultural sources subject to the requirements of title I or title V of the federal Clean Air Act. Section 42301.16(b) similarly requires permits for all agricultural sources unless specified findings are made at a public hearing or except as provided in section 42301.16(c). Section 42301.16(c) requires the District to make specified findings at a public hearing prior to requiring permits for agricultural sources with emissions that are less than one-half of any major source threshold. The net effect of this section is that all agricultural sources with actual emissions or a potential to emit at or above a major source applicability threshold are required to obtain a District permit pursuant to CH&SC section 42301.16(a). Agricultural sources with actual emissions at or above 50 percent of a major source applicability threshold are required to obtain a District permit, unless the District makes the findings specified by subsection (b). No permits are required for agricultural sources with actual emissions of less than 50 percent of the major source applicability thresholds, unless the District makes the findings specified in subsection (c), subject to the limitation in CH&SC section 42301(a).

The purpose of the addition of paragraph 4.6.9 to SIP Rule 2201 is as follows:

• This paragraph exempts new or modified agricultural sources from offset requirements to the extent provided by CH&SC section 42301.18(c), unless the offsets are required by federal CAA requirements (see CH&SC section 42301(a)). Section 42301.18(c) prohibits districts from requiring agricultural sources to obtain offsets if emissions reductions from such sources would not meet the criteria for real, permanent, quantifiable, and enforceable emissions reductions.

III. EPA's Evaluation and Action on the 2006 Revisions

A. How is EPA evaluating the rules?

Generally, SIP rules must be enforceable and must not interfere with an area's progress towards attainment or any other requirement of the Act. See CAA sections 110(a), 110(l); see also CAA section 193 (antibacksliding requirements for pre-1990 control measures). Specific EPA requirements for SIPs with respect to review of new or modified minor stationary sources are set forth in 40 CFR 51.160 through 51.164. CAA section 110(l) directs EPA to disapprove any SIP revision that would interfere with any applicable requirement concerning attainment or reasonable further progress or any other applicable requirement of the Act. Assuming that CAA section 193 applies to NSR, section 193 does not apply to this action because as of November 15, 1990, all agricultural sources were entirely exempt from permitting and offset requirements. Thus, the proposed revisions, specifying limits on the permit and offset requirements for minor agricultural sources, do not modify a control requirement in effect before passage of the Clean Air Act Amendments of 1990.

B. Do the rules meet the evaluation criteria?

1. Compliance With EPA Enforceability and Minor Source Permitting Requirements

The limited exemptions from permitting and offsets provided in paragraphs 6.20 (Rule 2020) and 4.6.9 (Rule 2201) for minor agricultural sources are consistent with EPA requirements for enforceability. The limited exemptions are also consistent with the requirements promulgated in 40 CFR 51.160—51.164 for stationary sources that do not exceed the major source or major modification thresholds. EPA is proposing to approve paragraphs 6.20 and 4.6.9 into Rules 2020 and 2201, respectively, because SJVUAPCD has discretion in conducting its minor source permitting program to exempt certain small sources and, under federal law, minor sources are not required to obtain offsets. Congress directed the States to exercise the primary responsibility under the CAA to tailor air quality control measures, including minor source permitting programs, to the State's needs. See *Train* v. *NRDC*, 421 U.S. 60, 79 (1975) (States make the primary decisions over how to achieve CAA requirements); *Union Electric Co.* v. *EPA*, 427 U.S. 246 (1976); *Greenbaum* v. *EPA*, 370 F.3d 527 (6th Cir. 2006). Specifically, paragraph 6.20 of Rule 2020 complies with the requirements for minor sources established in 40 CFR 51.160(b)(2). That regulation requires the permitting authority to retain the legal ability to prevent construction or modification of a minor source if ''[i]t will interfere with the attainment or maintenance of a national standard.'' Paragraph 6.20, by incorporating CH&SC section 42301.16(c), continues to allow the District to require permits for agricultural sources with emissions that are less than one-half of any major source threshold upon making specified findings at a public hearing. One such finding is that emissions from the construction or modification of the source will adversely impact air quality. Thus, since the exemptions in paragraphs 6.20 and 4.6.9 do not apply to any major stationary sources or major modifications at existing major stationary sources, and the exemptions comply with federal regulations, we believe these revisions are fully approvable under section 110(k)(2) of the CAA.

2. CAA Section 110(l)

The only remaining issue is whether this SIP revision would interfere with requirements concerning attainment and reasonable further progress (or any other applicable CAA requirement) as set forth in CAA section 110(l). CAA section 110(l) provides: ''Each revision to an implementation plan submitted by a State under this chapter shall be adopted by such State after reasonable notice and public hearing. The administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 7501 of this title) or any other applicable requirement of this chapter.''

The San Joaquin Valley is currently designated nonattainment for $PM_{2.5}$, PM_{10}, and the eight-hour ozone standard. The area is formally designated attainment for the remaining criteria pollutants. The District's attainment plan for $PM_{2.5}$ is due April 8, 2008, it has submitted a plan for attaining the ozone standard, and EPA has published a Finding of Attainment for PM_{10}, 71 FR 63462 (Oct. 30, 2006).

Prior to the time that attainment demonstrations are due for a standard, it is unknown what suite of control measures are needed for a given area to attain the standard. During this period, to demonstrate no interference with any applicable NAAQS or requirement of the Clean Air Act under section 110(l), EPA's view is that it is appropriate to allow states to substitute equivalent emission reductions to compensate for the control measure being removed from the active SIP. This approach has been adopted after notice and comment rulemaking in other SIP revisions. See, e.g., 70 FR 57750 (October 4, 2005); 70 FR 53 (January 3, 2005).

EPA also believes there are other means to demonstrate that a SIP revision would not interfere with attainment or maintenance of the NAAQS, such as modeling to show noninterference with attainment, or a full attainment demonstration.[7] In this case, after considering the District's attainment status and attainment plans for nonattainment pollutants, we believe that the adoption of the proposed revisions in place of the SIP as proposed to be corrected would not result in any change in emissions, any change in air quality, or any change in the area's ability to attain or maintain the NAAQS.

Accordingly, we conclude that this SIP revision, if approved, will not interfere with any applicable requirements for attainment and reasonable further progress or any other applicable requirement of the CAA and is approvable under section 110(l).

C. Public Comment and Final Action

Under section 110(k)(6) of the Clean Air Act, we are proposing to correct our May 2004 final approval of revisions to District NSR permitting Rules 2020 and 2201 because, by virtue of information submitted by California to us in November 2003, we should have limited our approval consistent with the legal authority provided in State law to air districts to permit, and require offsets for, new or modified agricultural sources. To correct our error, we are proposing regulatory language to so limit our May 2004 approval.

Under section 110(k)(2) of the Clean Air Act, we are proposing to approve the District's 2006 revisions to Rules 2020 and 2201 to conform the rules to State law by explicitly exempting certain small or minor agricultural sources from permitting requirements and by exempting all minor agricultural sources from offset requirements until certain criteria are met. We will accept comments from the public on this proposal for the next 30 days. If, after consideration of public comments, we decide to publish a final error correction and final approval of the revised rules in the same document, then we intend that the language of the revised rules will supercede the error correction and we do not intend to codify the proposed regulatory language limiting our May 2004 approval of the previous versions of District Rules 2020 and 2201.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this proposed action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely proposes to correct an error and to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to correct an error and approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

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

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

[7] We note that no approved or submitted San Joaquin Valley attainment plan for any nonattainment pollutant has relied upon NSR for agricultural sources less than 50 percent of the major source threshold. Further, for attainment planning purposes, growth in emissions from agricultural sources has been established by CARB's area source inventory growth methodologies, and no mitigation of that growth, such as through an offset requirement, has been considered when determining the impact of the growth on the District's ability to achieve attainment with the standards. See the District's Clean Air Act 110(l) Analysis entitled ''San Joaquin Valley Unified Air Pollution Control District Rules 2020 and 2201, as amended September 21, 2006, District's Clean Air Act 110(l) Analysis'' dated November 20, 2007.

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Dated: January 31, 2008.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. E8–3113 Filed 2–19–08; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 375

[Docket No. FMCSA–2008–0019]

RIN 2126–AB01

Transportation of Household Goods; Consumer Complaint Information Quarterly Report

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: FMCSA proposes to amend the Federal Motor Carrier Safety Regulations to implement reporting requirements for household goods motor carriers operating in interstate commerce under section 4214 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU). SAFETEA–LU directs FMCSA to issue regulations requiring that each household goods motor carrier operating in interstate commerce submit a quarterly report summarizing specific information. These reports must include the number of shipments originating with, and delivered by, the carrier; the number and general category of complaints lodged by consumers with the carrier; the number of claims for loss and damage in excess of $500 filed with the carrier; and the number of such claims resolved, declined, and pending during the reporting period.

DATES: Submit comments concerning this NPRM on or before April 21, 2008.

ADDRESSES: You may submit comments identified by the Federal Docket Management System Number in the heading of this document by any of the following methods. Do not submit the same comments by more than one method. However, to allow effective public participation in this rulemaking before the comment period deadline, the Agency encourages use of the Web site that is listed first. It will provide the most efficient and timely method of receiving and processing your comments.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.
- *Hand Delivery:* Ground floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number or Regulatory Identification Number for this regulatory action. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. Refer to the Privacy Act heading on *http://www.regulations.gov* for further information. If addressing a specific request for comments in this NPRM, please provide detailed information (including examples) and clearly identify the related section heading or question number for each topic addressed in your comments.

Public Participation: The regulations.gov system is generally available 24 hours each day, 365 days each year. You can find electronic submission and retrieval help and guidelines under the ''help'' section of the Web site. For notification that FMCSA received the comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments on line.

Copies or abstracts of all documents referenced in this notice are in the docket for this rulemaking: FMCSA–2008–0019. For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, FMCSA will also continue to file relevant information in the docket as it becomes available after the comment period closing date, and interested persons should continue to examine the docket for new material. A final rule may be published at any time after the close of the comment period.

FOR FURTHER INFORMATION CONTACT: Ms. Dorothea Grymes, (202) 385–2400. Office hours are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Legal Basis for the Rulemaking

Under the Household Goods Mover Oversight Enforcement and Reform Act of 2005 (Title IV Subtitle B of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU)), the Secretary of Transportation (Secretary) must issue regulations requiring each motor carrier of household goods operating in interstate commerce to submit a quarterly report. [See section 4214(a)(2) of Pub. L. 109–59.] The quarterly report must summarize: (1) The number of shipments that originate and are delivered for individual shippers during the reporting period by the carrier; (2) the number and general category of complaints lodged by consumers with the carrier; (3) the number of claims for loss and damage exceeding $500 filed with the carrier; and (4) the number of such claims resolved, declined, and pending during the reporting period. The regulatory changes in this proposed rule would implement that reporting requirement. Under 49 CFR 1.73(a), the Secretary has delegated the various authorities described in this section to the FMCSA Administrator.

Background

The Motor Carrier Safety Improvement Act of 1999 (Pub. L. 106–159, December 9, 1999, 113 Stat. 1749) established FMCSA as a separate agency within the U.S. Department of Transportation (DOT). Through that statute, Congress also authorized the Agency to regulate motor carriers transporting household goods in interstate commerce for individual shippers. We codified and published regulations setting forth Federal consumer protection requirements for interstate household goods motor carriers in 49 CFR part 375.

In testimony before the U.S. House Subcommittee on Highways and

Transportation (Hearing: Oversight of the Household Goods Moving Industry. July 12, 2001. No. 107–32),[1] the Government Accountability Office urged DOT to collect and analyze nationwide complaint information that would help the Department understand and oversee the household goods moving industry. Consumer groups also expressed the need for DOT to aggregate complaints nationwide to help direct enforcement activities.

On June 11, 2003, FMCSA published an interim final rule (68 FR 35064) that required household goods motor carriers to have an arbitration program for individual shippers and to provide prospective shippers with a description of the household goods motor carrier's customer complaint and inquiry handling procedure.

Subsequently, Congress enacted section 4214(a)(2) of SAFETEA–LU, which directed the Secretary to issue regulations requiring each motor carrier of household goods to submit a quarterly report summarizing the following:

- The number of shipments that originate and are delivered for individual shippers during the reporting period by the carrier;
- The number and general category of complaints lodged by consumers with the carrier;
- The number of claims for loss and damage exceeding $500 filed with the carrier; and
- The number of such claims resolved, declined, and pending during the reporting period.

Although FMCSA maintains both online access for filing consumer complaints and a consumer complaint hotline, the Agency does not require household goods motor carriers to report carrier shipments, complaints received, and claims resolution. This proposed rule would implement the statutory mandate that each household goods motor carrier submit quarterly reports addressing these subjects.

Because an individual shipper has the option of filing a claim or complaint against any carrier involved in handling his or her household goods, the Agency interprets the statute as requiring household goods motor carriers to report all interstate shipments handled by the carrier, including those in which other carriers may have provided all or part of the line-haul transportation.

Section 4214 Consumer Complaint Information

Section 4214(a)(1) requires FMCSA to establish a system, database, and procedures for filing and logging consumer complaints relating to household goods motor carriers for the purpose of compiling or linking complaint information gathered by FMCSA and the States with regard to such carriers. Section 4214(a)(1) also requires FMCSA to establish procedures to allow the public to have access, subject to 5 U.S.C. 552(a),[2] to aggregated complaint information and a process for carriers to challenge duplicate or fraudulent information in the database. FMCSA was also directed, under section 4214(a)(3), to develop a procedure to forward complaints to the motor carrier named in the complaint and to the appropriate State authority in the State in which the complainant resides. Section 4214(b) requires FMCSA to consider the information gathered in the database as a part of the Agency's household goods compliance and enforcement program. FMCSA has implemented the requirements of subsections 4214(a)(1), (a)(3), and (b) of SAFETEA–LU by establishing a system, database, and procedures for filing and logging consumer complaints relating to household goods motor carriers.[3] The only requirement left to implement is section 4214(a)(2). This section requires FMCSA to promulgate regulations requiring household goods motor carriers to file quarterly reports about the consumer complaints they receive and their disposition of loss and damage claims in excess of $500. FMCSA plans to link the quarterly complaint information reports with the system of complaints previously established and currently in operation.

Section 4214(a)(2) Household Goods Carrier Quarterly Reports: Proposed Reporting Requirements

Under section 4214(a)(2)(B), the quarterly report must group complaints into general categories. In today's NPRM, FMCSA proposes that household goods carriers be required to submit quarterly reports on a standard form that prescribes general complaint categories. We propose to use four general complaint categories and a fifth category for all other complaints that do not fit within one of the four specific categories. FMCSA also proposes that household goods motor carrier quarterly reports be submitted to the Agency either through a web-based system or in hard copy form.

In prescribing four specific complaint categories, we seek to ensure consistency regarding the types and number of complaints—important factors when we use the data to identify trends, problems and potential future program changes. This approach helps ensure we collect data that FMCSA, regulated entities, and the public can compare and measure meaningfully. If we allow household goods motor carriers to decide what categories of complaints to report, we may get data that users cannot measure or compare objectively. Prescribing general categories of complaints will allow users to compare and assess data quality by cross-referencing complaint categories in the consumer database with the quarterly reports from motor carriers.

Our proposed requirement that carriers record quarterly data on a standard form would help ensure the collection of data in a way that is easy to process and disseminate. A standard form avoids the burden of comparing disparate elements and sorting them into meaningful data.

The Agency proposes to use the following five complaint categories: Loss and damage; service[4]; rates or charges; how claims are handled; and other complaints that do not fall within these four categories. The four specific complaint categories are the four most often reported to, or filed with, FMCSA on its household goods complaint hotline or on its household goods complaint Web page.[5]

We also propose making this required form web-based so that household goods motor carriers can submit it electronically. We believe that most household goods motor carriers have Internet access. With online filing, we expect fewer data entry mistakes because the household goods motor carrier directly inputs the information. Online filing will also reduce processing time and be more cost efficient. However, we recognize that all carriers may not have convenient Internet access. If a carrier lacks Internet access,

[1] An electronic copy of the Hearing: Oversight of the Household Goods Moving Industry. July 12, 2001. No. 107–32 may be found at: *http://commdocs.house.gov/committees/Trans/hpw107-32.000/hpw107-32_0f.htm.*

[2] The Privacy Act of 1974, Public Law 93–579, 88 Stat, 1897 (December 31, 1974), as amended.

[3] Individual shippers may either fill out the Household Goods Consumer Complaint form found at *http://nccdb.fmcsa.dot.gov/HomePage.asp* or telephone the FMCSA Household Goods Consumer Complaint Hotline at 1–888–DOT–SAFT (1–888–368–7238) Monday–Friday between the hours of 9 a.m. and 9 p.m. e.t.

[4] Service complaints by individual shippers usually involve (1) a delay in providing service; or (2) refusal or failure to provide services as agreed. Two examples are refusing to weigh shipments upon requests by an individual shipper and failing to pick up or deliver household goods at agreed upon times or in an agreed upon manner.

[5] See footnote 3 above.

it may file a paper version of FMCSA's report form.

The Agency plans to incorporate the quarterly report system into its COMPASS program. The COMPASS program is an FMCSA-wide initiative that is consolidating all of FMCSA's separate databases and information technology systems into one coordinated system that should improve the Agency's ability to accomplish its mission and serve the public. More information on COMPASS is available at *http://www.fmcsa.dot.gov* FMCSA plans to require motor carriers using the quarterly reporting system to access the COMPASS system with a secure sign-on procedure. FMCSA plans to display summaries of all reported data on the Agency's Web site, as it does with other information in FMCSA's systems.

As we stated previously, FMCSA also plans to link the quarterly reports with the other complaints the Agency receives directly from individual shippers to monitor the household goods industry as required by subsections 4214(a)(1) and (a)(3) of SAFETEA–LU. This information will assist FMCSA with its household goods compliance and enforcement program.

Proposed Penalties for Failing To File a Quarterly Report or for Filing an Incomplete or Inaccurate Quarterly Report

Household goods motor carriers or their officers, agents, or employees who fail to: (1) File a report with FMCSA; (2) specifically, completely and truthfully answer a question on the report; or (3) make, prepare, or preserve the report in the form and manner prescribed are subject to a minimum civil penalty of $650 for each violation and for each additional day the violation continues under 49 U.S.C. 14901(a). Under 49 U.S.C. 14907, a maximum civil penalty of $6,500 can be assessed for: (1) Failing to file a required report; (2) failing to answer a question on the report within 30 days from the date FMCSA requires the question to be answered; (3) failing to make, prepare, or preserve the report in the form and manner prescribed; (4) falsifying, destroying, or changing the report; (5) filing a false report; (6) making a false or incomplete entry in the report about a business related fact; or (7) preparing or preserving the report in violation of FMCSA regulations.[6]

Other Approaches We Considered

In 49 CFR 375.209(b)(4), FMCSA already requires household goods motor carriers to maintain a record of all inquiries and complaints received from an individual shipper by any means of communication. Therefore, household goods motor carriers must already collect complaint data, presumably on an existing company form or through an electronic company system organized into general categories useful to the household goods motor carrier. We considered allowing carriers to use their existing forms to satisfy section 4214(a)(2) reporting requirements.

This approach would permit carriers to report information captured in their company databases using their own general categories without prescribing uniform categories of complaints or requiring a standard form. If a company summarizes its complaint data on its own form using its own categories, then requiring the company to change to a standard form and standard categories would impose a burden to weigh against any possible benefit—especially if the company system already brings in the numerical data required for the quarterly report under SAFETEA–LU section 4214(a)(2).

Although this approach may be less burdensome and less costly for household goods carriers, it likely would result in a lack of uniformity in the data received from the industry, severely limiting the usefulness of the quarterly report.

We also considered an approach that would be identical to our proposal, except that web-based reporting would be required in all circumstances. Required web-based data collection would facilitate Agency data sorting and processing. On the other hand, for a carrier without Internet access, requiring web-based reporting would result in additional cost associated with procuring access through other locations. Nevertheless, the incremental cost to household goods carriers of a fully web-based reporting system would be relatively small, and the Agency is considering a final rule that would not allow the filing of reports by mail. FMCSA solicits comments on the costs and feasibility of an all-electronic method of reporting the information required by section 4214.

We also considered whether to propose a similar quarterly reporting requirement for household goods brokers, although SAFETEA–LU does not mandate such a requirement. We concluded it was premature to propose such a requirement at this time because we have recently proposed new regulatory requirements for household goods brokers. Our experience with the quarterly reporting requirement for household goods carriers mandated by SAFETEA–LU and proposed in this rulemaking will help the Agency evaluate whether such a requirement would be useful in connection with household goods brokers, in light of the new requirements.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

FMCSA has made a determination that this action is a significant regulatory action within the meaning of Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979) because of public interest in household goods transportation issues. The purpose of this analysis is to present the likely costs and benefits to the motor carrier industry of complying with these proposed regulations.

A preliminary estimate of the costs of the proposed complaint reporting system was made based on certain assumptions. This analysis assumes that only active household goods motor carriers involved in interstate commerce will be required to assemble quarterly reports on complaints received, shipments moved, and loss or damage claims filed. We estimate that the quarterly reports will take 2 hours per quarter for household goods motor carriers to assemble. The regulations will require household goods motor carriers to report the ''number and general category'' of complaints received, but household goods motor carriers will not have to provide full details of the complaints, as a result of this regulation.

Under the Agency's proposal, we anticipate that most reports will be compiled and filed via an online report filing system. Regardless of which method of transmission is chosen, the costs for compiling the reports are expected to be the same. We assume that the reports will be compiled and filed by clerical staff working for the motor carrier. The hourly wage for a general office worker is $11.82 per hour, according to the Bureau of Labor Statistics. Inflating this number by 30 percent to account for fringe benefits, the total cost of time for a general office clerk would be $15.37 per hour.

There are about 5,400 active household goods motor carriers operating in interstate commerce in the United States as of April 2006. Assuming 2 hours per report filed, the reports would cost each active household goods carrier just under $31 to file. Since reports are to be filed

[6] For more information, see paragraphs (g)(1) and (g)(16) in Appendix B to 49 CFR part 386—*Penalty Schedule; Violations and Maximum Civil Penalties.*

quarterly, this amounts to an annual per-carrier cost of about $123. Multiplying this figure by the 5,400 current active household goods motor carriers yields a total annual cost to the industry of about $664,000.

While we anticipate that most motor carriers will file online reports, some household goods motor carriers would file reports by mail. Carriers would bear the costs of mailing forms. Although the number of motor carriers who would choose to file by mail is unknown, it is unlikely to be very large. For the purposes of the Agency's regulatory analysis, FMCSA assumed that 25 percent of carriers would choose to file by mail. Assuming 25 percent of motor carriers opt to mail forms, FMCSA would expect to receive 5,400 forms by mail a year; and mailing costs would amount to $5,400 annually.

Regarding benefits, this rule is intended to improve the Agency's oversight of the nation's household goods motor carriers and make complaint data more accessible to the public. FMCSA has experienced an increase in the number of complaints it receives against household goods motor carriers in recent years, which could be an indication that customer service in this industry may be declining. We anticipate that this requirement will enable the Agency to better detect household goods motor carriers that are potentially not complying with Federal regulations governing the movement of household goods, including those governing the payment of loss and damage claims. Improved monitoring should reduce the number of complaints against this segment of the motor carrier industry by assisting the Agency in identifying companies that may be out of compliance with consumer protection regulations. Once identified, the Agency can monitor these carriers to ensure compliance with consumer protection guidelines or take action to remove them from the household goods moving segment of the industry, if appropriate. Although the Agency cannot quantify these benefits at this time, we believe that the rule will result in fewer damaged goods, better customer satisfaction, and fewer instances in which carriers attempt to extort inflated payments from individuals by refusing to deliver their goods. These benefits would result from providing customers with improved information on past carrier performance. This information would enable customers to select carriers which do not have poor customer service, which would result in more business for carriers that protect customer goods and honor pricing and damaged goods reimbursement agreements. A copy of the full regulatory evaluation is in the docket. The Office of Management and Budget (OMB) has reviewed this document.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), Federal agencies must determine whether requirements contained in rulemakings are subject to information collection provisions of the PRA and, if they are, obtain approval from the Office of Management and Budget for each collection of information they conduct, sponsor, or require through regulations. This rulemaking is subject to those provisions because it requires motor carriers of household goods to submit quarterly reports. FMCSA will seek approval of the information collection requirements proposed in this NPRM and the proposed Household Goods Motor Carrier Quarterly Report form in the revised information collection for ''Transportation of Household Goods; Consumer Protection,'' OMB No. 2126–0025, which covers all information collections included under 49 CFR part 375.

The Agency expects the information proposed to be collected will assist individual shippers of household goods in their commercial dealings with household goods motor carriers engaged in interstate commerce, thereby providing a desirable consumer protection service. The collection of information would be used by prospective household goods shippers to make informed decisions about contracts and services to be ordered, executed, and settled within the interstate household goods carrier industry. The Agency also believes the information will help consumer advocacy groups to assist household goods shippers to make informed decisions.

Assumptions used for calculation of the additional information collection burdens included in this proposal are the following: (1) There are currently approximately 5,400 interstate household goods motor carriers; (2) 75 percent of the quarterly reports of consumer complaints will be collected electronically; and (3) it will take motor carriers approximately 2 hours to compile and file the quarterly reports.

Household goods motor carriers may file reports online or via regular mail. For online submission, carriers would use an Internet portal created by the Agency to fill out an online form that would require the carrier to submit specific information. The Agency would therefore specify exactly what data carriers must report. A paper version of this online form would also be created for carriers that prefer to file the required information by mail. It is anticipated that most reports will be compiled and filed via the online report filing system, by administrative staff in motor carrier offices. Regardless of which method of transmission is chosen, FMCSA expects the burden for compiling the reports will be the same. The Agency assumes that, on average, it will take carriers approximately 2 hours to compile reports. Since carriers must file quarterly reports, this amounts to an annual per-carrier burden of 8 hours. Multiplying this figure by the 5,400 current active household goods motor carriers, we estimate a total annual additional burden of 43,200 hours. See Table 1.

TABLE 1.—CURRENT AND PROPOSED INFORMATION COLLECTION BURDENS

OMB approval No.	Burden hours currently approved	Additional burden hours proposed	Proposed total
2126–0025	4,552,737	43,200	*4,595,937

*Rounded up to 4,600,000 for the 2126–0025 estimate.

FMCSA will round the number up to 4,600,000 and ask OMB to approve this rounded number as the annual burden hour estimate. The Agency invites comment on this information collection analysis.

Regulatory Flexibility Act

FMCSA has completed a preliminary analysis of the burdens on small businesses as required under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 601 note), and found that this rulemaking will increase reporting requirements for businesses in the household goods moving industry. FMCSA expects that compiling and

submitting quarterly reports on complaints received will impose a modest cost on household goods motor carriers.

FMCSA's Motor Carrier Management Information System (MCMIS) had 5,400 active interstate household goods carriers in the United States as of April 2006.[7] Household goods carriers in both interstate and intrastate commerce brought in a total of approximately $12.7 billion in revenue in 2002. They employed more than 111,000 people, with a total payroll of over $3.1 billion.[8]

The MCMIS data indicate that the household goods segment employed more than 165,000 drivers as of April 2006. These numbers are somewhat higher than those included in the 2002 Census report. The largest 20 household goods carriers employ 110,541 of these drivers, or roughly 67 percent of the drivers employed by this segment. Some 4,926 household goods carriers employ 20 or fewer drivers, and 4,489 employ 10 or fewer drivers. This industry is made up of a few very large carriers and many small-to-medium sized businesses.

The Small Business Administration's revenue threshold for small businesses in the used household and office goods moving sector (NAICS code 484210) is $23.5 million in annual revenue.[9] The Agency believes that the vast majority of motor carriers in this sector would fall under this threshold. Census Bureau data provide evidence that a large majority of household goods carriers are small businesses.

The Economic Census collects data on the size of establishments in various sectors of the economy. According to the 2002 data, 125 of the 7,225 establishments in the Used Household and Office Goods Moving segment of the economy had revenues that exceeded $10 million per year.[10] These data imply that as many as 98 percent of household goods carriers would qualify as small businesses. However, given that some firms have more than one establishment, the Census figures may underestimate the size of firms in the industry.

This rule would require interstate household goods carriers to submit quarterly reports containing the following data: (1) The number of shipments by the carrier; (2) the number and general category of complaints lodged by consumers with the carrier; (3) the number of claims for loss and damage exceeding $500 filed with the carrier; and (4) the number of such claims resolved, declined, and pending during the reporting period. The information requested is not specialized in nature, and would not require specialized personnel to compile or submit. A general office worker should be capable of compiling and submitting the required information. FMCSA estimates that compiling the information will cost household goods carriers approximately 2 hours per quarter worth of time, which has an economic value, when aggregated across the industry, of $664,000 per year. This would be about $123 per carrier annually. While some carriers may incur additional costs by opting to submit the information by mail rather than electronically, these costs will be negligible.

Accordingly, the Administrator of the FMCSA hereby certifies that this proposal will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Imposed Upon State, Local, and Tribal Governmental Entities

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; 2 U.S.C. 1532) requires each agency to assess the effects of its regulatory actions on State, local, and tribal governments and the private sector. Any agency promulgating a final rule likely to result in a Federal mandate requiring expenditures by a State, local or tribal government or by the private sector of $128.1 million or more in any one year must prepare a written statement incorporating various assessments, estimates, and descriptions that are delineated in the Act. FMCSA has determined that the quarterly report proposed in this rulemaking would not have an impact of $128.1 million or more in any one year.

Environmental Impacts

FMCSA analyzed this rule under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) (NEPA), the Council on Environmental Quality Regulations Implementing NEPA (40 CFR 1500–1508), and FMCSA's NEPA Implementation Order (69 FR 6980, March 1, 2004). This rule would be categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under paragraphs 6.m.(6) and 6.q of Appendix 2 to FMCSA's Order as regulations implementing data collection activities. This rule would merely amend the information collection requirements for household goods carriers to include a quarterly report of the number of shipments, complaints, and claims.

We have also analyzed this proposed rule under the Clean Air Act, as amended (CAA) section 176(c), (42 U.S.C. 7401 *et seq.*) and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's general conformity requirement since it involves rulemaking and policy development and issuance. See 40 CFR 93.153(c)(2). It would not result in any emissions increase nor would it have any potential to result in emissions that are above the general conformity rule's *de minimis* emission threshold levels. Moreover, it is reasonably foreseeable that the rule would not increase total CMV mileage, change the routing of CMVs, how CMVs operate, or the CMV fleet-mix of motor carriers. This action merely establishes a quarterly reporting regulation applicable to the business practices of household goods motor carriers.

Privacy Impact Assessment

FMCSA conducted a privacy impact assessment of this proposed rule as required by section 522(a)(5) of the FY 2005 Omnibus Appropriations Act, Public Law 108–447, 118 Stat. 3268 (December 8, 2004) [set out as a note to 5 U.S.C. 552a]. FMCSA has determined that the changes proposed in this rulemaking would not have privacy impacts. The quarterly reports FMCSA proposes that household goods motor carriers would submit under this proposal would not include personally identifiable information about individual shippers or motor carriers.

Executive Order 13045 (Protection of Children)

FMCSA has analyzed this proposed action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. FMCSA certifies that this proposed action would not cause any environmental risk to health or safety that may disproportionately affect children.

[7] FMCSA Analysis Division. MCMIS Data Query on Active Household Goods Carriers. April 4, 2006.

[8] U.S. Census Bureau. Truck Transportation: 2002. U.S. Department of Commerce, Economics and Statistics Administration. October, 2004.

[9] Small Business Administration. ''Table of Small Business Size Standards Matched to North American Industry Classification System Codes'' Effective October 1, 2007. Available online at *http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf*.

[10] The Economic Census counts each storefront or business location of a firm as a separate establishment, which is why there are more establishments than firms in the household goods moving industry. Also, the Census Bureau found a total of 8,642 firms in the household goods moving industry, but only 7,225 were in business for the entire year, which is the number cited above. The Census Bureau also does not collect data on whether the firm is engaged in interstate commerce or exclusively in intrastate commerce. Thus, wholly intrastate firms not regulated by FMCSA are shown in the Economic Census data.

Executive Order 12630 (Taking of Private Property)

FMCSA has analyzed this proposed rule under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. FMCSA does not anticipate that this proposed action would effect a taking of private property or otherwise have taking implications under Executive Order 12630.

Executive Order 13132 (Federalism)

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and FMCSA has preliminarily determined that this proposed action would not warrant the preparation of a Federalism assessment. FMCSA has determined that this proposed action would not affect the States' ability to discharge traditional State government functions.

Executive Order 12988 (Civil Justice Reform)

This proposed action 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.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this NPRM.

Executive Order 13211 (Energy Supply, Distribution, or Use)

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a significant energy action within the meaning of section 4(b) of the Executive Order and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required.

Executive Order 13175 (Tribal Consultation)

The FMCSA has analyzed this action under Executive Order 13175, dated November 6, 2000, and believes that the proposed action would not have substantial direct effects on one or more Indian tribes; would not impose substantial compliance costs on Indian tribal governments; and will not preempt tribal law. Therefore, a tribal summary impact statement is not required.

List of Subjects in 49 CFR Part 375

Advertising, Arbitration, Consumer protection, Freight, Highways and roads, Insurance, Motor carriers, Moving of household goods, Reporting and recordkeeping requirements.

In consideration of the foregoing, FMCSA proposes to amend title 49, Code of Federal Regulations, by revising part 375 as set forth below.

PART 375—TRANSPORTATION OF HOUSEHOLD GOODS IN INTERSTATE COMMERCE; CONSUMER PROTECTION REGULATIONS

1. Revise the authority citation for part 375 to read as follows:

Authority: 5 U.S.C. 553; 49 U.S.C. 13301, 13704, 13707, 14104, 14706; sec. 4214 of Pub. L. 109–59, 119 Stat. 1144; and 49 CFR 1.73.

2. Amend 49 CFR 375.105 by revising paragraph (b) to read as follows:

§ 375.105 What are the information collection requirements of this part?

* * * * *

(b) The information collection requirements are found in the following sections: Section 375.107, Section 375.205, Section 375.207, Section 375.209, Section 375.211, Section 375.213, Section 375.215, Section 375.217, Section 375.303, Section 375.401, Section 375.403, Section 375.405, Section 375.409, Section 375.501, Section 375.503, Section 375.505, Section 375.507, Section 375.515, Section 375.519, Section 375.521, Section 375.605, Section 375.607, Section 375.609, Section 375.803, Section 375.805, and Section 375.807.

3. Add § 375.107 to read as follows:

§ 375.107 What information must I provide in a quarterly report to FMCSA?

(a) You must submit on a quarterly basis a report summarizing all of the following:

(1) The number of shipments that originate, and are delivered for individual shippers during the reporting period by your company.

(2) The total number of complaints (representing both oral and written complaints) lodged by consumers with your company in each of the following general categories:

(i) Rates or charges;

(ii) Service (including, but not limited to, failure to timely pick up or deliver household goods or refusal to weigh a shipment upon a request by an individual shipper);

(iii) Loss and damage;

(iv) How claims are handled; and

(v) Other.

(3) The number of claims filed against your company for loss and damage in excess of $500.

(4) The number of claims for loss and damage in excess of $500 settled during the reporting period.

(5) The number of claims for loss and damage in excess of $500 declined in the reporting period.

(6) The number of claims for loss and damage in excess of $500 that are pending at the close of the reporting period.

(b) You must submit the quarterly report on Form MCSA—(form number will be issued in the final rule), Household Goods Motor Carrier Quarterly Report. You may submit the quarterly report electronically by completing the form on our Web site at (the address will be provided in the final rule). If you do not have access to Internet service for online filing, you may submit the quarterly report by mail to (the address will be provided in the final rule).

(c) Quarterly reports are due as follows:

TABLE TO 49 CFR 375.107(C)

Quarter	Due
1st Quarter January 1–March 31	April 30.
2nd Quarter April 1–June 30	July 31.
3rd Quarter July 1–September 30	October 31.
4th Quarter October 1–December 31	January 31.

(d) You must always submit a quarterly report, even when the quarterly count for all categories is zero.

Form MCSA–XX Household Goods Motor Carrier Quarterly Report

Submission Date: _____

Check here if this is an amended report: _____

Company Name: _____

Company Address: _____

City: _____

State: _____

Zip: _____

Individual Point of Contact: _____

Phone: _____

Fax Phone: _____

E-mail: _____

USDOT#: _____

MC#: _____

Reporting Period: Year: _____

Quarter: 1st ☐ 2nd ☐ 3rd ☐ 4th ☐

Summary of Complaint and Claim Information for the Reporting Period:

1. Number of shipments that originate and are delivered for individual shippers during the reporting period: _____

2. Number of oral and written complaints in these general categories that consumers lodged against the company:

A. Rates or Charges _____

B. Service _____

C. Loss and Damage _____

D. How Claims are Handled _____

E. Other _____

3. Number of claims filed with you for loss and damage in excess of $500: _____

4. Number of claims for loss and damage in excess of $500 settled during the reporting period: _____

5. Number of claims for loss and damage in excess of $500 declined in the reporting period: _____

6. Number of claims for loss and damage in excess of $500 pending at the close of the reporting period: _____

Issued on: February 6, 2008

John H. Hill,

Administrator.

[FR Doc. E8–2867 Filed 2–19–08; 8:45 am]

BILLING CODE 4910–EX–P

Notices

Federal Register

Vol. 73, No. 34

Wednesday, February 20, 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

Rural Housing Service

Notice of Funds Availability for the Section 533 Housing Preservation Grants for Fiscal Year 2008

Announcement Type: Initial Notice inviting applications from qualified applicants for Fiscal Year 2008.

Catalog of Federal Domestic Assistance Numbers (CFDA): 10.433.

SUMMARY: The Rural Housing Service (RHS), an agency within Rural Development, announces that it is soliciting competitive applications under its Housing Preservation Grant (HPG) program. The HPG program is a grant program which provides qualified public agencies, private nonprofit organizations, which may include, but not be limited to, faith-based and community organizations, and other eligible entities grant funds to assist very low- and low-income homeowners in repairing and rehabilitating their homes in rural areas. In addition, the HPG program assists rental property owners and cooperative housing complexes in repairing and rehabilitating their units if they agree to make such units available to low- and very low-income persons. This action is taken to comply with Agency regulations found in 7 CFR part 1944, subpart N, which require the Agency to announce the opening and closing dates for receipt of preapplications for HPG funds from eligible applicants. The intended effect of this Notice is to provide eligible organizations notice of these dates.

DATES: The closing deadline for receipt of all applications in response to this Notice is 5 p.m., local time for each Rural Development State Office on April 21, 2008. The application closing deadline is firm as to date and hour. RHS will not consider any application that is received after the closing deadline. Applicants intending to mail applications must provide sufficient time to permit delivery on or before the closing deadline date and time. Acceptance by the United States Postal Service or private mailer does not constitute delivery. Facsimile (FAX) and postage due applications will not be accepted.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The reporting requirements contained in this Notice have been approved by the Office of Management and Budget under Control Number 0575–0115.

Program Administration

I. Funding Opportunities Description

The funding instrument for the HPG Program will be a grant agreement. The term of the grant can vary from 1 to 2 years, depending on available funds and demand. No maximum or minimum grant levels have been established at the National level. You should contact the Rural Development State Office to determine the allocation.

II. Award Information

For Fiscal Year 2008, $9,593,704 is available for the HPG Program. The total includes $656,704 in carryover funds. A set-aside of $595,800 has been established for grants located in Empowerment Zones, Enterprise Communities, and Rural Economic Area Partnership Zones and other funds will be distributed under a formula allocation to states pursuant to 7 CFR part 1940, subpart L, ''Methodology and Formulas for Allocation of Loan and Grant Program Funds.'' Decisions on funding will be based on pre-applications.

III. Eligibility Information

7 CFR part 1944, subpart N provides details on what information must be contained in the preapplication package. Entities wishing to apply for assistance should contact the Rural Development State Office to receive further information, the State allocation of funds, and copies of the preapplication package. Eligible entities for these competitively awarded grants include state and local governments, nonprofit corporations, which may include, but not be limited to faith-based and community organizations, Federally recognized Indian tribes, and consortia of eligible entities.

Federally recognized Indian tribes, pursuant to 7 CFR 1944.674, are exempt from the requirement to consult with local leaders including announcing the availability of its statement of activities for review in a newspaper.

As part of the application, all applicants must also provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number. As required by the Office of Management and Budget (OMB), all grant applicants must provide a DUNS number when applying for Federal grants, on or after October 1, 2003. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free DUNS number request line at 1–866–705–5711. Additional information concerning this requirement is provided in a policy directive issued by OMB and published in the **Federal Register** on June 27, 2003 (68 FR 38402–38405).

To comply with the President's Management Agenda, the Department of Agriculture is participating as a partner in the new Government-wide Grants.gov site in FY 2008. Housing Preservation Grants [Catalog of Federal Domestic Assistance No. 10.433] is one of the programs included at this Web site. You may access the electronic grant application for Housing Preservation Grants at: *http://www.grants.gov*. If you are an applicant under the Housing Preservation Grant Program, you may submit your application to the Agency in either electronic or paper format. Please be mindful that the application deadline for electronic format differs from the deadline for paper format. The electronic format deadline will be based on Eastern Standard Time. The paper format deadline is local time for each Rural Development State Office.

Users of Grants.gov will be able to download a copy of the application package, complete it offline, and then upload and submit the application via the *Grants.gov* site. You may not e-mail an electronic copy of a grant application to USDA Rural Development; however, the Agency encourages your participation in *Grants.gov.*

The following are useful tips and instructions on how to use the Web site:

- When you enter the *Grants.gov* site, you will find information about submitting an application electronically through the site as well as the hours of operation. USDA Rural Development strongly recommends that you do not

wait until the application deadline date to begin the application process through *Grants.gov.* To use *Grants.gov,* applicants must have a DUNS number.

- You may submit all documents electronically through the Web site, including all information typically included on the Application for Rural Housing Preservation Grants, and all necessary assurances and certifications.
- Your application must comply with any page limit requirements described in this Notice.
- After you electronically submit your application through the Web site, you will receive an automatic acknowledgement from *Grants.gov* that contains a *Grants.gov* tracking number.
- RHS may request that you provide original signatures on forms at a later date.
- If you experience technical difficulties on the closing date and are unable to meet the 5 p.m. (Eastern Standard Time) deadline, print out your application and submit it to your State Office; you must meet the closing date and local time deadline.
- Please note that you must locate the downloadable application package for this program by the CFDA Number or FedGrants Funding Opportunity Number, which can be found at *http://www.fedgrants.gov.*

IV. Application and Submission Information

Applicants wishing to apply for assistance must make its statement of activities available to the public for comment. The applicant(s) must announce the availability of its statement of activities for review in a newspaper of general circulation in the project area and allow at least 15 days for public comment. The start of this 15-day period must occur no later than 16 days prior to the last day for acceptance of pre-applications by USDA Rural Development.

Applicants must also contact the Rural Development State Office serving the place in which they desire to submit an application to receive further information and copies of the application package. Rural Development will date and time stamp incoming applications to evidence timely receipt, and, upon request, will provide the applicant with a written acknowledgment of receipt. A listing of Rural Development State Offices, their addresses, telephone numbers, and person to contact follows:

Note: Telephone numbers listed are not toll-free.

Alabama State Office
Suite 601, Sterling Centre, 4121 Carmichael Road, Montgomery, AL 36106–3683, (334) 279–3455, TDD (334) 279–3495, Judith Druckemiller.

Alaska State Office
800 West Evergreen, Suite 201, Palmer, AK 99645, (907) 761–7740, TDD (907) 761–8905, Debbie I. Davis.

Arizona State Office
Phoenix Courthouse and Federal Building, 230 North First Ave., Suite 206, Phoenix, AZ 85003–1706, (602) 280–8768, TDD (602) 280–8706, Carol Torres.

Arkansas State Office
700 W. Capitol Ave., Rm. 3416, Little Rock, AR 72201–3225, (501) 301–3258, TDD (501) 301–3063, Clinton King.

California State Office
430 G Street, #4169, Davis, CA 95616–4169, (530) 792–5821, TDD (530) 792–5848, Debra Moretton.

Colorado State Office
655 Parfet Street, Room E100, Lakewood, CO 80215, (720) 544–2923, TDD (800) 659–2656, Mary Summerfield.

Connecticut
Served by Massachusetts State Office.

Delaware and Maryland State Office
1221 College Park Drive, Suite 200, Dover, DE 19904, (302) 857–3615, TDD (302) 857–3585, Pat Baker.

Florida & Virgin Islands State Office
4440 NW. 25th Place, Gainesville, FL 32606–6563, (352) 338–3465, TDD (352) 338–3499, Elizabeth M. Whitaker.

Georgia State Office
Stephens Federal Building, 355 E. Hancock Avenue, Athens, GA 30601–2768, (706) 546–2164, TDD (706) 546–2034, Wayne Rogers.

Hawaii State Office
(Services all Hawaii, American Samoa, Guam, and Western Pacific), Room 311, Federal Building, 154 Waianuenue Avenue, Hilo, HI 96720, (808) 933–8300, TDD (808) 933–8321, Gayle Kuheana.

Idaho State Office
Suite A1, 9173 West Barnes Dr., Boise, ID 83709, (208) 378–5628, TDD (208) 378–5644, Joyce Weinzetl.

Illinois State Office
2118 West Park Court, Suite A, Champaign, IL 61821–2986, (217) 403–6222, TDD (217) 403–6240, Barry L. Ramsey.

Indiana State Office
5975 Lakeside Boulevard, Indianapolis, IN 46278, (317) 290–3100 (ext. 423), TDD (317) 290–3343, Stephen Dye.

Iowa State Office
210 Walnut Street, Room 873, Des Moines, IA 50309, (515) 284–4666, TDD (515) 284–4858, Mary Beth Juergens.

Kansas State Office
1303 SW First American Place, Suite 100, Topeka, KS 66604–4040, (785) 271–2721, TDD (785) 271–2767, Virginia M. Hammersmith.

Kentucky State Office
771 Corporate Drive, Suite 200, Lexington, KY 40503, (859) 224–7325, TDD (859) 224–7422, Beth Moore.

Louisiana State Office
3727 Government Street, Alexandria, LA 71302, (318) 473–7962, TDD (318) 473–7655, Yvonne R. Emerson.

Maine State Office
967 Illinois Ave., Suite 4, P.O. Box 405, Bangor, ME 04402–0405, (207) 990–9110, TDD (207) 942–7331, Bob Nadeau.

Maryland
Served by Delaware State Office.

Massachusetts, Connecticut, & Rhode Island State Office
451 West Street, Suite 2, Amherst, MA 01002, (413) 253–4315, TDD (413) 253–4590, Paul Geoffroy.

Michigan State Office
3001 Coolidge Road, Suite 200, East Lansing, MI 48823, (517) 324–5192, TDD (517) 337–6795, Ghulam R. Simbal.

Minnesota State Office
375 Jackson Street Building, Suite 410, St. Paul, MN 55125, (651) 602–7804, TDD (651) 602–7830, Thomas Osborne.

Mississippi State Office
Federal Building, Suite 831, 100 W. Capitol Street, Jackson, MS 39269, (601) 965–4325, TDD (601) 965–5850, Darnella Smith-Murray.

Missouri State Office
601 Business Loop 70 West, Parkade Center, Suite 235, Columbia, MO 65203, (573) 876–9303, TDD (573) 876–9480, Becky Eftink.

Montana State Office
900 Technology Blvd., Suite B, Bozeman, MT 59771, (406) 585–2515, TDD (406) 585–2562, Deborah Chorlton.

Nebraska State Office
Federal Building, Room 152, 100 Centennial Mall N., Lincoln, NE 68508, (402) 437–5557, TDD (402) 437–5093, Lanae Brasch.

Nevada State Office
1390 South Curry Street, Carson City, NV 89703–9910, (775) 887–1222 (ext. 14), TDD (775) 885–0633, Mona Sargent.

New Hampshire State Office
Concord Center, Suite 218, Box 317, 10 Ferry Street, Concord, NH 03301–5004, (603) 223–6046, TDD (603) 229–0536, Sandra Hawkins.

New Jersey State Office
5th Floor North, Suite 500, 8000 Midlantic Drive, Mt. Laurel, NJ 08054, (856) 787–7740, TDD (856) 787–7784, George Hyatt, Jr.

New Mexico State Office
6200 Jefferson St., NE., Room 255, Albuquerque, NM 87109, (505) 761–4944, TDD (505) 761–4938, Carmen N. Lopez.

New York State Office
The Galleries of Syracuse, 441 S. Salina Street, Suite 357, 5th Floor, Syracuse, NY 13202, (315) 736–3316 (ext. 128), TDD (315) 477–6447, Tia Shulkin.

North Carolina State Office
4405 Bland Road, Suite 260, Raleigh, NC 27609, (919) 873–2066, TDD (919) 873–2003, William A. Hobbs.

North Dakota State Office
Federal Building, Room 208, 220 East Rosser, P.O. Box 1737, Bismarck, ND 58502, (701) 530–2046, TDD (701) 530–2113, Barry Borstad.

Ohio State Office
Federal Building, Room 507, 200 North High Street, Columbus, OH 43215–2477, (614) 255–2409, TDD (614) 255–2554, Cathy Simmons.

Oklahoma State Office

100 USDA, Suite 108, Stillwater, OK 74074–2654, (405) 742–1070, TDD (405) 742–1007, Ivan Graves.

Oregon State Office
101 SW. Main, Suite 1410, Portland, OR 97204–3222, (503) 414–3340, TDD (503) 414–3387, Barb Brandon.

Pennsylvania State Office
One Credit Union Place, Suite 330, Harrisburg, PA 17110–2996, (717) 237–2282, TDD (717) 237–2261, Martha E. Hanson.

Puerto Rico State Office
IBM Building, Suite 601, Munoz Rivera Ave., #654, San Juan, PR 00918, (787) 766–5095 (ext. 249), TDD (787) 766–5332, Lourdes Colon.

Rhode Island
Served by Massachusetts State Office.

South Carolina State Office
Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007, Columbia, SC 29201, (803) 253–3432, TDD (803) 765–5697, Larry D. Floyd.

South Dakota State Office
Federal Building, Room 210, 200 Fourth Street, SW., Huron, SD 57350, (605) 352–1132, TDD (605) 352–1147, Roger Hazuka or Pam Reilly.

Tennessee State Office
Suite 300, 3322 West End Avenue, Nashville, TN 37203–1084, (615) 783–1375, TDD (615) 783–1397, Larry Kennedy.

Texas State Office
Federal Building, Suite 102, 101 South Main, Temple, TX 76501, (254) 742–9767, TDD (254) 742–9712, Linda Sultenfuss.

Utah State Office
Wallace F. Bennett Federal Building, 125 S. State Street, Room 4311, Salt Lake City, UT 84138, (801) 524–4329, TDD (801) 524–3309, Kristine Dahlberg.

Vermont State Office
City Center, 3rd Floor, 89 Main Street, Montpelier, VT 05602, (802) 828–6021, TDD (802) 223–6365, Heidi Setien.

Virgin Islands
Served by Florida State Office.

Virginia State Office
Culpeper Building, Suite 238, 1606 Santa Rosa Road, Richmond, VA 23229, (804) 287–1596, TDD (804) 287–1753, CJ Michels.

Washington State Office
1835 Black Lake Blvd., Suite B, Olympia, WA 98512, (360) 704–7730, TDD (360) 704–7742, Robert L. Lund.

Western Pacific Territories
Served by Hawaii State Office.

West Virginia
Parkersburg West Virginia County Office, 91 Boyles Lane, Parkersburg, WV 26104, (304) 422–9070, TDD (304) 284–4836, Penny Thaxton.

Wisconsin State Office
4949 Kirschling Court, Stevens Point, WI 54481, (715) 345–7608 (ext. 111), TDD (715) 345–7614, Peter Kohnen.

Wyoming State Office
P.O. Box 82601, Casper, WY 82602–5006, (307) 233–6716, TDD (307) 233–6733, Alan Brooks.

FOR FURTHER INFORMATION CONTACT: For general information, applicants may contact Bonnie Edwards-Jackson, Senior Loan Specialist, Multi-Family Housing Processing Division, USDA Rural Development, Stop 0781, 1400 Independence Avenue, SW., Washington, DC 20250–0781, telephone (202) 690–0759 (voice) (this is not a toll free number) or (800) 877–8339 (TDD-Federal Information Relay Service) or via e-mail at, *Bonnie.Edwards@wdc.usda.gov.*

V. Application Review Information

All applications for Section 533 funds must be filed with the appropriate Rural Development State Office and must meet the requirements of this Notice and 7 CFR part 1944, subpart N. Pre-applications determined not eligible and/or not meeting the selection criteria will be notified by the Rural Development State Office.

All applicants will file an original and two copies of Standard Form (SF) 424, ''Application For Federal Assistance,'' and supporting information with the appropriate Rural Development State Office. A pre-application package, including SF–424, is available in any Rural Development State Office. All pre-applications shall be accompanied by the following information, which Rural Development will use to determine the applicant's eligibility to undertake the HPG program and to evaluate the pre-application under the project selection criteria of § 1944.679 of 7 CFR part 1944, subpart N.

(a) A statement of activities proposed by the applicant for its HPG program as appropriate to the type of assistance the applicant is proposing, including:

(1) A complete discussion of the type of and conditions for financial assistance for housing preservation, including whether the request for assistance is for a homeowner assistance program, a rental property assistance program, or a cooperative assistance program;

(2) The process for selecting recipients for HPG assistance, determining housing preservation needs of the dwelling, performing the necessary work, and monitoring/inspecting work performed;

(3) A description of the process for identifying potential environmental impacts in accordance with § 1944.672 of 7 CFR part 1944, subpart N, and the provisions for compliance with Stipulation I, A–G of the Programmatic Memorandum of Agreement, also known as PMOA, (RD Instruction 2000–FF, available in any Rural Development State Office) in accordance with § 1944.673(b) of 7 CFR part 1944, subpart N;

(4) The development standard(s) the applicant will use for the housing preservation work; and, if not the Rural Development standards for existing dwellings, the evidence of its acceptance by the jurisdiction where the grant will be implemented;

(5) The time schedule for completing the program;

(6) The staffing required to complete the program;

(7) The estimated number of very low- and low-income minority and nonminority persons the grantee will assist with HPG funds; and, if a rental property or cooperative assistance program, the number of units and the term of restrictive covenants on their use for very low- and low-income;

(8) The geographical area(s) to be served by the HPG program;

(9) The annual estimated budget for the program period based on the financial needs to accomplish the objectives outlined in the proposal. The budget should include proposed direct and indirect administrative costs, such as personnel, fringe benefits, travel, equipment, supplies, contracts, and other cost categories, detailing those costs for which the grantee proposes to use the HPG grant separately from non-HPG resources, if any. The applicant budget should also include a schedule (with amounts) of how the applicant proposes to draw HPG grant funds, i.e., monthly, quarterly, lump sum for program activities, etc.;

(10) A copy of a indirect cost proposal as required in 7 CFR parts 3015, 3016, and 3019, when the applicant has another source of federal funding in addition to the Rural Development HPG program;

(11) A brief description of the accounting system to be used;

(12) The method of evaluation to be used by the applicant to determine the effectiveness of its program which encompasses the requirements for quarterly reports to Rural Development in accordance with § 1944.683(b) of 7 CFR part 1944, subpart N and the monitoring plan for rental properties and cooperatives (when applicable) according to § 1944.689 of 7 CFR part 1944, subpart N;

(13) The source and estimated amount of other financial resources to be obtained and used by the applicant for both HPG activities and housing development and/or supporting activities;

(14) The use of program income, if any, and the tracking system used for monitoring same;

(15) The applicant's plan for disposition of any security instruments held by them as a result of its HPG

activities in the event of its loss of legal status;

(16) Any other information necessary to explain the proposed HPG program; and

(17) The outreach efforts outlined in § 1944.671(b) of 7 CFR part 1944, subpart N.

(b) Complete information about the applicant's experience and capacity to carry out the objectives of the proposed HPG program.

(c) Evidence of the applicant's legal existence, including, in the case of a private nonprofit organization, which may include, but not be limited to, faith-based and community organizations, a copy of, or an accurate reference to, the specific provisions of State law under which the applicant is organized; a certified copy of the applicant's Articles of Incorporation and Bylaws or other evidence of corporate existence; certificate of incorporation for other than public bodies; evidence of good standing from the State when the corporation has been in existence 1 year or more; and the names and addresses of the applicant's members, directors and officers. If other organizations are members of the applicant-organization, or the applicant is a consortium, pre-applications should be accompanied by the names, addresses, and principal purpose of the other organizations. If the applicant is a consortium, documentation showing compliance with paragraph (4)(ii) under the definition of ''organization'' in § 1944.656 of 7 CFR part 1944, subpart N must also be included.

(d) For a private nonprofit entity, which may include, but not be limited to faith-based organizations, the most recent audited statement and a current financial statement dated and signed by an authorized officer of the entity showing the amounts and specific nature of assets and liabilities together with information on the repayment schedule and status of any debt(s) owed by the applicant.

(e) A brief narrative statement which includes information about the area to be served and the need for improved housing (including both percentage and the actual number of both low-income and low-income minority households and substandard housing), the need for the type of housing preservation assistance being proposed, the anticipated use of HPG resources for historic properties, the method of evaluation to be used by the applicant in determining the effectiveness of its efforts.

(f) Applicant must submit an original and one copy of Form RD 1940–20, ''Request for Environmental Information,'' prepared in accordance with Exhibit F–1 of RD Instruction 1944–N (available in any Rural Development State Office).

(g) Applicant must also submit a description of its process for:

(1) Identifying and rehabilitating properties listed on or eligible for listing on the National Register of Historic Places;

(2) Identifying properties that are located in a floodplain or wetland;

(3) Identifying properties located within the Coastal Barrier Resources System; and

(4) Coordinating with other public and private organizations and programs that provide assistance in the rehabilitation of historic properties (Stipulation I, D, of the PMOA, RD Instruction 2000–FF, available in any Rural Development State Office).

(h) The applicant must also submit evidence of the State Historic Preservation Office's, also known as SHPO, concurrence in the proposal, or in the event of nonconcurrence, a copy of SHPO's comments together with evidence that the applicant has received the Advisory Council on Historic Preservation's advice as to how the disagreement might be resolved, and a copy of any advice provided by the Council.

(i) The applicant must submit written statements and related correspondence reflecting compliance with § 1944.674(a) and (c) of 7 CFR part 1944, subpart N regarding consultation with local government leaders in the preparation of its program and the consultation with local and state government pursuant to the provisions of Executive Order 12372.

(j) The applicant is to make its statement of activities available to the public for comment prior to submission to Rural Development pursuant to § 1944.674(b) of 7 CFR part 1944, subpart N. The application must contain a description of how the comments (if any were received) were addressed.

(k) The applicant must submit an original and one copy of Form RD 400–1, ''Equal Opportunity Agreement,'' and Form RD 400–4, ''Assurance Agreement,'' in accordance with § 1944.676 of 7 CFR part 1944, subpart N.

Applicants should review 7 CFR part 1944, subpart N for a comprehensive list of all application requirements.

VI. Selection Criteria

The Rural Development State Offices will utilize the following project selection criteria for applicants in accordance with § 1944.679 of 7 CFR part 1944, subpart N:

(a) Providing a financially feasible program of housing preservation assistance. ''Financially feasible'' is defined as proposed assistance which will be affordable to the intended recipient or result in affordable housing for very low- and low-income persons.

(b) Serving eligible rural areas with a concentration of substandard housing for households with very low- and low-income.

(c) Being an eligible applicant as defined in § 1944.658 of 7 CFR part 1944, subpart N.

(d) Meeting the requirements of consultation and public comment in accordance with § 1944.674 of 7 CFR part 1944, subpart N.

(e) Submitting a complete preapplication as outlined in § 1944.676 of 7 CFR part 1944, subpart N.

For applicants meeting all of the requirements listed above, the Rural Development State Offices will use weighted criteria in accordance with 7 CFR part 1944, subpart N as selection for the grant recipients. Each preapplication and its accompanying statement of activities will be evaluated and, based solely on the information contained in the preapplication, the applicant's proposal will be numerically rated on each criteria within the range provided. The highest-ranking applicant(s) will be selected based on allocation of funds available to the state.

(a) Points are awarded based on the percentage of very low-income persons that the applicant proposes to assist, using the following scale:

(1) More than 80%: 20 points.

(2) 61% to 80%: 15 points.

(3) 41% to 60%: 10 points.

(4) 20% to 40%: 5 points.

(5) Less than 20%: 0 points.

(b) The applicant's proposal may be expected to result in the following percentage of HPG fund use (excluding administrative costs) to total cost of unit preservation. This percentage reflects maximum repair or rehabilitation with the least possible HPG funds due to leveraging, innovative financial assistance, owner's contribution or other specified approaches. Points are awarded based on the following percentage of HPG funds (excluding administrative costs) to total funds:

(1) 50% or less: 20 points.

(2) 51% to 65%: 15 points.

(3) 66% to 80%: 10 points.

(4) 81% to 95%: 5 points.

(5) 96% to 100%: 0 points.

(c) The applicant has demonstrated its administrative capacity in assisting very low- and low-income persons to obtain adequate housing based on the following:

(1) The organization or a member of its staff has 2 or more years experience successfully managing and operating a rehabilitation or weatherization type program: 10 points.

(2) The organization or a member of its staff has 2 or more years experience successfully managing and operating a program assisting very low- and low-income persons obtain housing assistance: 10 points.

(3) If the organization has administered grant programs, there are no outstanding or unresolved audit or investigative findings which might impair carrying out the proposal: 10 points.

(d) The proposed program will be undertaken entirely in rural areas outside Metropolitan Statistical Areas, also known as MSAs, identified by Rural Development as having populations below 10,000 or in remote parts of other rural areas (i.e., rural areas contained in MSAs with less than 5,000 population) as defined in § 1944.656 of 7 CFR part 1944, subpart N: 10 points.

(e) The program will use less than 20 percent of HPG funds for administration purposes:
(1) More than 20%: Not eligible.
(2) 20%: 0 points.
(3) 19%: 1 point.
(4) 18%: 2 points.
(5) 17%: 3 points.
(6) 16%: 4 points.
(7) 15% or less: 5 points.

(f) The proposed program contains a component for alleviating overcrowding as defined in § 1944.656 of 7 CFR part 1944, subpart N: 5 points.

In the event more than one preapplication receives the same amount of points, those preapplications will then be ranked based on the actual percentage figure used for determining the points. Further, in the event that preapplications are still tied, then those preapplications still tied will be ranked based on the percentage for HPG fund use (low to high). Further, for applications where assistance to rental properties or cooperatives is proposed, those still tied will be further ranked based on the number of years the units are available for occupancy under the program (a minimum of 5 years is required). For this part, ranking will be based from most to least number of years.

Finally, if there is still a tie, then a lottery system will be used.

VII. Non-Discrimination Statement

USDA prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250–9410, or call (800) 795–3272 (voice), (202) 720–6382 (TDD). ''USDA is an equal opportunity provider, employer, and lender.''

Dated: February 8, 2008.

Russell T. Davis,

Administrator, Rural Housing Service.

[FR Doc. 08–690 Filed 2–19–08; 8:45 am]

BILLING CODE 3410–XV–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Arizona State Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a planning meeting of the Arizona Advisory Committee to the Commission will convene by conference call at 2 p.m. Mountain Standard Time on March 3, 2008. The purpose of the meeting is to plan future activities.

This meeting is available to the public through the following toll-free call-in number: Dialing 1–866–349–3556, access code: 34933357. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and access code.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Angelica Trevino at the Commission's Western Regional Office, (213) 894–3437, by 3 p.m., Pacific Standard Time, on Friday, February 29, 2008.

Members of the public are entitled to submit written comments. The comments must be received in the regional office by April 3, 2008. The address is 300 N. Los Angeles St., Suite 2010, Los Angeles, CA 90012. Comments may be e-mailed to *atrevino@usccr.gov.* Records generated by this meeting may be inspected and reproduced at the Western Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *http://www.usccr.gov,* or to contact the Western Regional Office at the above e-mail or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC, February 14, 2008.

Christopher Byrnes,

Chief, Regional Programs Coordination Unit.

[FR Doc. E8–3134 Filed 2–19–08; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Docket 6–2008]

Foreign–Trade Zone 42 Orlando, FL

Application for Expansion of Manufacturing Authority

Subzone 42A Mitsubishi Power Systems Americas, Inc.

(Power Generation Turbine Components)

An application has been submitted to the Foreign–Trade Zones Board (the Board) by the Greater Orlando Aviation Authority, grantee of FTZ 42, on behalf of Mitsubishi Power Systems Americas, Inc. (MPSA), operator of Subzone 42A at the MPSA power generation turbine components repair/ manufacturing plant in Orlando, Florida, requesting an expansion of the scope of FTZ manufacturingauthority to include new manufacturing capacity and finished products. The application was submitted pursuant to the provisions of the Foreign–Trade Zones Act, as amended (19 U.S.C. 81a–81u), and section 400.28(a)(2) of the Board's regulations (15 CFR Part 400). It was formally filed on February 6, 2008.

Subzone 42A was approved in 2002 for the manufacture and repair of large

gas–fired power generation turbine components (combustor baskets and transition pieces; up to 1,800 total units annually) at the MPSA plant (306 employees/15 acres/80,000 sq.ft. of production area) in Orlando, Florida (Board Order 1234, 67 FR 45456, 7–9–2002). The applicant currently requests that the scope of FTZ manufacturing authority be extended to include an additional 81,500 square feet of production area to accommodate additional production capacity (new total would be 161,500 sq.ft.), which will be added with a new facility within the existing boundaries of Subzone 42A. The new capacity would be used to manufacture and repair additional steam and gas turbine components. MPSA's existing FTZ authority for the manufacture of combustor baskets and transition pieces would remain unchanged.

Under the proposal, MPSA would manufacture stainless steel steam turbine blades and vanes (up to 2,200 total units per year) for the U.S. market and export. Activity would involve receiving foreign–origin semi–finished forgings (classified under HTSUS 8406.81, 8406.90) that would be machined, finished, and coated to produce finished steam turbine blades and vanes. Some 70 percent of the finished blades and vanes will be exported.

Expanded FTZ procedures would continue to exempt MPSA from customs duty payments on the foreign–origin inputs used in production for export. On domestic shipments, the company would be able to defer duty payments on the foreign inputs until they would be entered for U.S. consumption. FTZ procedures may also result in increased logistical/supply chain efficiencies for MPSA's distribution operations.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the following address: Office of the Executive Secretary, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW,Washington, DC 20230–0002. The closing period for receipt of comments is April 21, 2008. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to May 5, 2008.

A copy of the application will be available for public inspection at each of the following locations: U.S. Department of Commerce Export Assistance Center, Suite 100, 315 East Robinson Street, Orlando, FL 32801; and, at the Office of the Foreign–Trade Zones Board's Executive Secretary at the address listed above. For further information, contact Pierre Duy, examiner, at: pierre__duy@ita.doc.gov, or (202) 482–1378.

Dated: February 6, 2008.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E8–3152 Filed 2–19–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–912]

Certain New Pneumatic Off-The-Road Tires 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: February 20, 2008.

SUMMARY: We preliminarily determine that certain new pneumatic off-the-road tires (''OTR tires'') from the People's Republic of China (''PRC'') are being, or are 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 margins of sales at LTFV are shown in the ''Preliminary Determination'' section of this notice. Pursuant to requests from interested parties, we are postponing the final determination and extending the provisional measures from a four-month period to not more than six months. Accordingly, we will make our final determination not later than 135 days after publication of the preliminary determination.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita or Charles Riggle, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4243 or 482–0650, respectively.

SUPPLEMENTARY INFORMATION:

Case History

On June 18, 2007, Titan Tire Corporation, a subsidiary of Titan International, Inc. (''Titan''), and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO–CLC (''USW'') (collectively, ''Petitioners''), filed a petition in proper form on behalf of the domestic industry and workers producing OTR tires, concerning imports of OTR tires from the PRC (''Petition'').

The Department of Commerce (''the Department'') initiated this investigation on July 30, 2007.[1] In the *Notice of Initiation*, the Department applied a process by which exporters and producers may obtain separate-rates in non-market economy (''NME'') investigations. The process requires exporters and producers to submit a separate-rate status application (''SRA'').[2] 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* government control over its export activities) has not changed. The SRA for this investigation was posted on the Department's Web site *http://ia.ita.doc.gov/ia-highlights-and-news.html* on August 10, 2007. The due date for filing an SRA was September 28, 2007.

On July 30, 2007, the Department issued quantity and value (''Q&V'') questionnaires to 94 companies. In addition, on July 30, 2007, the Department requested the assistance of the Government of the PRC (through the Ministry of Commerce) in transmitting the Department's Q&V questionnaire to all companies that manufacture and export subject merchandise to the Untied States, as well as to manufacturers that produce the subject merchandise for companies that were engaged in exporting subject merchandise to the United States during the period of investigation (''POI'').

From August 8 to August 20, 2007, 30 exporters of the subject merchandise filed timely responses to the Department's Q&V questionnaire.[3] One

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[1] *See Initiation of Antidumping Duty Investigation: Certain New Pneumatic Off-The-Road Tires From the People's Republic of China*, 72 FR 43591 (August 6, 2007) (''*Notice of Initiation*'').

[2] *See* Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-market Economy Countries (April 5, 2005) (*Policy Bulletin* 05.1), available at *http://ia.ita.doc.gov/policy/bull05-1.pdf*.

[3] Aeolus Tyre Co., Ltd (''Aeolus''), Double Coin Holding Ltd. (''Double Coin''), Double Happiness Tyre Industries Corp., Ltd. (''Double Happiness''), Full-World International Trading Co., Ltd. (''Full-World''), GITI Tire (China) Investment Company Ltd. (''GITI''), Guizhou Tyre Co., Ltd. (''Guizhou Tyre''), Hebei Starbright Co., Ltd. (''Starbright''), Jiangsu Feichi Co., Ltd. (''Feichi''), KS Holding Company Limited (''KS Holding''), Laizhou Xiongying Rubber Industry Co., Ltd. (''Xiongying''), Oriental Tyre Technology Limited (''Oriental''), Qingdao Etyre International Trade Co., Ltd. (''Etyre''), Qingdao Hengda Tyres Co., Ltd. (''Hengda''), Qingdao Milestone Tyre Co., Ltd. (''Milestone''), Qingdao Qihang Tyre Co., Ltd.

of these companies, GITI, reported that it made no sales to the United States during the POI. The Government of the PRC did not respond to the Department's letter requesting assistance in transmitting the Q&V questionnaire to procedures and exporters of the subject merchandise in the PRC.

On August 20, 2007, Petitioners; Valmont Industries, Inc. (''Valmont''), Carlisle Tire & Wheel (''Carlisle''), Bridgestone Holding, Inc. and its subsidiary, Bridgestone Firestone North American Tire, LLC (''Bridgestone''), and Agri-Fab, Inc. (''Agri-Fab'') (collectively ''domestic interested parties''); and Guizhou Tyre submitted comments on the scope of the investigation. In addition, Aeolus requested to be a mandatory respondent in this investigation. Alternatively, Aeolus requested that if it were not selected as a mandatory respondent, that it be accepted as a voluntary respondent pursuant to section 782(a) of the Act and 19 CFR 351.204(d). On August 27, 2007, Petitioners, Bridgestone, and Guizhou Tyre filed scope rebuttal comments. In addition, the Department returned Qingdao Aonuo Tyre Co. Ltd.'s (''Aonuo's'') August 8, 2007, Q&V submission because Aonuo did not submit the final proprietary and public versions the following business day as required by the Department's regulations. *See* 19 CFR 351.303(c)(2).

On August 27, 2007, the United States International Trade Commission (''ITC'') issued its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of OTR tires from the PRC.[4] Additionally, on August 31, 2007, the Department provided interested parties to this proceeding the opportunity to comment on the Department's proposed product characteristic reporting criteria and matching hierarchy.

On September 4, 2007, Aonuo attempted to file its Q&V information for the second time. On September 5, 2007, the Department returned the August 27, 2007, Q&V submission of Landmax International Co., Ltd. because it was not timely filed. In addition, per the Department's instructions, Starbright and TUTRIC filed amended Q&V responses, disaggregating their Q&V information, but continuing to argue that they should be treated as a single entity for the purposes of this investigation. On September 10, 2007, the Department returned Aonuo's September 4, 2007, Q&V submission because it was not timely filed. On September 14, 2007, Petitioners, Bridgestone, Guizhou Tyre, GPX International Tire Corporation (''GPX''), a U.S. Importer of subject merchandise, Starbright and TUTRIC filed comments on the proposed product characteristics criteria. In addition, Petitioners and Guizhou Tyre filed rebuttal comments on the scope of the investigation. On September 17, 2007, GPX provided comments on the affiliation and collapsing of Starbright and TUTRIC. On September 21, 2007, GPX requested that the Department select Starbright and TUTRIC as mandatory respondents. Bridgestone also provided comments on respondent selection. From September 24 through 27, 2007, Petitioners, Bridgestone, Guizhou Tyre, GPX, Starbright ad TUTRIC filed rebuttal comments concerning product characteristics.

From September 25 to 28, 2007, 28 producers and/or exporters of OTR tires from the PRC[5] filed timely SRAs.

On October 1, 2007, the Department issued its respondent selection memorandum, selecting Guizhou Tyre, Starbright, TUTRIC and Xugong as mandatory respondents in this investigation.[6] On October 2, 2007, the Department issued an antidumping duty questionnaire to the four above-named mandatory respondents. On October 3, 2007, Aeolus withdrew its August 20, 2007, request to be a voluntary respondent in this investigation. On October 5, 2007, Double Happiness amended its SRA.

On October 9, 2007, Petitioners filed comments on Guizhou Tyre's SRA and a document containing supplementary information entitled ''First Submission of Facts for the Record.'' On October 11, 2007, Petitioners and Bridgestone filed comments on the SRAs of the mandatory respondents and the other separate-rate applicants. In addition, on that date, Xiongying waived its rights to future service of all public and proprietary submissions in this investigation, with the exception of case briefs and rebuttal briefs. On October 12, 2007, the Government of the PRC (''GOC'') entered an appearance in this investigation. On October 15, 2007, Petitioners filed comments on TUTRIC's SRA.

On October 25, 2007, the Department requested that the Office of Policy provide a list of surrogate countries for this investigation.[7] On October 26, 2007, the Office of Policy issued its list of surrogate countries[8] and Guizhou Tyre, Starbright, TUTRIC and Xugong submitted section A responses (''AQR''). Additionally, on October 26, 2007, the Department issued letters requesting comments on the appropriate surrogate country to use in this investigation and for publicly available information to value factors of production (''FOP'').

On November 5, 2007, Petitioners submitted comments objecting to the consolidated response filed by Starbright and TUTRIC. On November 6, 2007, Petitioners and Bridgestone separately filed comments on Guizhou Tyre's SRA and Bridgestone filed comments on Xugong's SRA. On November 8 and 9, 2007, Petitioners filed comments on Xugong's and TUTRIC's AQR respectively.

On November 9, 2007, Petitioners, Bridgestone, Starbright and TUTRIC filed comments on the selection of a surrogate country. Petitioners and Bridgestone specified India as the most appropriate surrogate country, whereas Starbright and TUTRIC identified Sri Lanka as the most appropriate surrogate country.

On November 13 and 14, 2007, Bridgestone provided comments on the

(''Qihang''), Qingdao Qizhou Rubber Co., Ltd. (''Qizhou''), Qingdao Sinorient International Ltd. (''Sinorent''), Rodeo International Trading Co., Ltd. (''Rodeo''), Shandong Huitong Tyre Co., Ltd. (''Huitong''), Shandong Jinyu Tyre Co., Ltd. (''Jinyu'') Shandong Taishan Tyre Co., Ltd. (''Taishan''), Shandong Wanda Boto Tyre Co., Ltd. (''Wanda Boto''), Shandong Xingyuan International Trading Co., Ltd. (''Xingyuan''), Shifeng Double-Star Tire Co., Ltd. (''Double-Star''), Techking Tires Limited (Techking Enterprise (H.K.) Co., Ltd.) (''Techking''), Tianjin United Tire & Rubber International Co., Ltd. (''TUTRIC''), Triangle Tyre Co., Ltd. (''Triangle Tyre''), Wendeng City Sanfeng Tyre Co., Ltd. (''Sanfeng''), Xuzhou Xugong Tyre Company Limited (''Xugong'') and Zhaoyuan Leo Rubber Co., Ltd. (''Leo'').

[4] *See* Investigation Nos. 701–TA–448 and 731–TA–1117 (Preliminary): Certain Off-the-Road Tires From China, 72 FR 50699 (September 4, 2007).

[5] Aeolus, Double Coin, Double Happiness, Full-World, Guizhou Tyre, Starbright, Feichi, KS Holding, Xiongying, Oriental, Etyre, Hengda, Milestone, Qihang, Qizhou, Sinorent, Huitong, Jinyu, Taishan, Wanda Boto, Xingyuan, Double-Star, Techking, TUTRIC, Triangle Tyre, Sanfeng, Xugong, and Leo.

[6] *See* Memorandum to the File, ''Selection of Respondents for the Antidumping Investigation of Certain New Pneumatic Off-The-Road Tires from the People's Republic of China'' (October 1, 2007) (''Respondent Selection Memorandum''). *See also* ''Selection of Respondents'' section below.

[7] *See* Memorandum to Ron Lorentzen, Director, Office of Policy, ''Less-Than-Fair-Value Investigation of Certain New Pneumatic Off-The-Road Tires ('OTR tires') from the People's Republic of China ('PRC'), Surrogate Country Selection List,'' (October 25, 2007).

[8] *See* Memorandum from Ron Lorentzen, Director, Office of Policy, ''Antidumping Duty Investigation of Certain New Pneumatic Off-The-Road Tires ('OTR tires') from the People's Republic of China ('PRC'): Request for a List of Surrogate Countries,'' (October 26, 2007) (''Office of Policy Surrogate Countries Memorandum'').

combined AQR for Starbright and TUTRIC. Petitioners provided comments on Starbright's and TUTRIC's combined AQR on November 13, 2007.

On November 15, 2007, Petitioners requested that the Department extend the deadline for the preliminary determination by 50 days until February 5, 2008. In that same letter, Petitioners also requested that the Department similarly extend the deadline for filing critical circumstances and targeted dumping allegations.

On November 19, 2007, Petitioners and Bridgestone filed rebuttal comments on Starbright's and TUTRIC's surrogate-country-selection submission. Guizhou filed its sections C and D responses (''CQR'' and ''DQR,'' respectively) on November 21, 2007. Starbright, TUTRIC and Xugong also filed their CQRs and DQRs on November 23, 2007.

On November 30, 2007, as instructed by the Department, Starbright submitted a revised section C database containing only Starbright's constructed export price (''CEP'') sales to the United States. In addition, Starbright explained why the narrative section C response originally submitted on behalf of both Starbright and TUTRIC is equally valid and complete for Starbright alone, without further explanation, allocations or exhibits. On December 10, 2007, Guizhou Tyre amended its surrogate value information.

On December 13, 2007, Petitioners requested that the Department direct Starbright and TUTRIC to submit the business-proprietary versions of the responses concerning affiliation filed in the companion countervailing duty (''CVD'') investigation of OTR tires. On December 17, 2007, Petitioners, Bridgestone, Starbright and TUTRIC filed rebuttal comments on the surrogate value submissions.

The Department issued a supplemental questionnaire covering Xugong's AQR, CQR and DQR on December 18, 2007. The next day, Bridgestone filed an explanation of the methodology that it used to prepare Exhibit 2 of its December 4, 2007, comments on the Section C and D responses of Guizhou Tyre, Starbright and TUTRIC.

On December 26, 2007, the Department postponed the deadline for the preliminary determination for 50 days until February 5, 2008.[9]

On January 4, 2008, Guizhou Tyre submitted certain information contained in its SRA response and AQR on the public record of this investigation. On January 9, 2008, Xugong filed its first supplemental questionnaire response (''SQR'').

On January 10, 2008, Starbright and TUTRIC filed factual information and legal analysis in support of their affiliation claims. Additionally, on January 10 and 11, 2008, the Department issued supplemental questionnaires to certain SRA applicants.

On January 14, 2008, Guizhou Tyre and TUTRIC filed their respective SQRs. The Department issued a second supplemental questionnaire to Xugong on January 15, 2008. On January 16, 2008, TUTRIC requested an extension of the deadline for filing a corrected version of its January 14, 2008, submission, and Starbright filed its SQR. The Department granted TUTRIC's extension request on the same day. However, on January 17, 2008, the Department also rejected Exhibit 1 of Starbright's January 16, 2008, SQR (which had been submitted pursuant to 19 CFR 351.303(c)(2)) and Exhibit 1 of TUTRIC's January 14, 2008, SQR, granting each company a one-day extension to file a revised version of Exhibit 1 which conformed to the request for information in the Department's December 21, 2007, supplemental questionnaire. The Department explained that Starbright and TUTRIC could include any additional information from Exhibit 1 that they deemed directly relevant to the issue of affiliation.[10]

On January 17, 2008, Starbright submitted its SQR, and the Department issued a third supplemental questionnaire to Xugong. On January 18, 2008, Starbright and TUTRIC filed a second copy of their January 10, 2008, affiliation comments, which contained the pages that Starbright and TUTRIC requested that the Department insert in their January 11, 2008, letter. In addition, Starbright and TUTRIC each submitted revised copies of Exhibit 1 of their respective SQRs in accordance with the instructions in the Department's January 17, 2008, memorandum to the file.

On January 18, 2008, Xugong notified the Department by phone that it had inadvertently served Petitioners with all the copies of its SQR that were due to the Department that day, and requested an extension of the deadline to file its SQR for the SRA. The Department agreed and instructed Xugong to file a letter explaining this and requesting the extension on the next business day, which Xugong did. On January 23, 2008, Xugong submitted a second request for an extension along with a more detailed explanation of the January 18, 2008, filing error. At that time, Xugong also filed a corrected version of its section C database and corrected information provided in its SQR. In addition, Starbright and TUTRIC filed comments on Bridgestone's targeted dumping allegation.

On January 24, 2008, Full-World, Huitong, KS Holding, Qizhou, Triangle and Wanda Boto submitted timely responses to the Department's supplemental SRA questionnaires. On January 25, 2008, Guizhou Tyre submitted its second supplemental response. On January 28, 2008, Techking, Hengda, Sinorient and Etyre responded to the Department's supplemental SRA questionnaire. On January 28, 2008, (six days prior to the statutory deadline for issuing the preliminary LTFV determination) the GOC filed pre-preliminary determination comments arguing that the Department should adjust the U.S. prices calculated in the antidumping duty case for both export and domestic subsidies found to be countervailable in the companion CVD investigation. In that same submission, the GOC also requested that the Department revisit its determination from the AD proceeding on Chinese CFS[11] not to modify the existing NME AD methodology and made a general assertion that the Department should ''reevaluate it {sic} current AD methodology as applied to China so that it fairly and accurately reflects the realities of the Chinese economy.''[12] However, the GOC did not ask that we formally reevaluate the PRC's status as a non-market economy. Therefore, based on our decision in CFS,[13] we have not reevaluated our AD methodologies with respect to this proceeding.

On January 29, 2008, Guizhou Tyre filed its pre-preliminary determination comments. We received Guizhou Tyre's January 29 comments too late to consider for the preliminary

[9] *See Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Postponement of Preliminary Determination of Antidumping Duty Investigation,* 72 FR 72988 (December 26, 2007).

[10] *See* Memorandum from Charles Riggle, Program Manager, to the File ''Less-than-Fair-Value Investigation of Certain New Pneumatic Off-the-Road Tires (''OTR tires'') from the People's Republic of China (''PRC''): Telephone Call with Counsel for Hebei Starbright Tire Co. (''Starbright''), and Tianjin United Tire & Rubber International Co., Ltd. (''TUTRIC'') Regarding Supplemental Questionnaire Responses'' (January 17, 2008).

[11] *See Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China,* 72 FR 60632 (October 25, 2007) (''CFS''), and accompanying Issue and Decision Memorandum (''I&D Memo'') at Comment 1.

[12] *See OOC submission of January 28, 2008, at pages 9–12.*

[13] *See CFS, I&D Memo at Comment 1.*

determination, but will consider them for the final determination.

Targeted Dumping Allegation

On January 2, 2008, Bridgestone filed an allegation of targeted dumping based on a pattern of export prices for comparable merchandise that differ among regions for Guizhou Tyre, Starbright and TUTRIC, and an allegation of targeted dumping based on a pattern of export prices for comparable merchandise that differ among customers for Guizhou Tyre, Starbright, TUTRIC and Xugong. In addition, Bridgestone filed allegations of targeted dumping based on a pattern of export prices for comparable merchandise that differ significantly among customers and regions for Starbright—TUTRIC combined. On January 3, 2008, Petitioners filed a letter supporting Bridgestone's allegation of targeted dumping. On January 9, 2008, Xugong submitted comments on Bridgestone's targeted dumping allegation. On January 10, 2008, Bridgestone amended its January 2, 2008, targeted dumping allegation to include two computer files that were omitted from its initial allegation.

On January 10, 2008, Xugong submitted comments regarding the targeted dumping allegation. On January 22, 2008, the Department requested that Bridgestone revise its targeted dumping allegation to include customer-specific targeted dumping allegations and to revise its methodology for calculating the ''mean'' prices for alleged ''targeted and ''non-targeted'' sales, and to eliminate the bracketing of any words that effectively constitute the statutory requirements of the allegations, or the methodology used to make the allegations. On January 23, 2008, Starbright and TUTRIC provided comments on Bridgestone's targeted dumping allegations. Bridgestone filed a supplement to its targeted dumping allegation on January 25, 2008.

Given the timing of the allegation, the respondent parties' comments thereon, as well as the extensive nature of these comments, the Department was unable to address the targeted dumping allegation for this preliminary determination. We intend to issue a preliminary finding regarding these allegations after the preliminary LTFV determination, but within sufficient time to allow all parties time to comment for the final LTFV determination.

Postponement of Final Determination

Section 735(a)(2)(A) 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. Section 351.210(e)(2) of the Department's regulations requires that exporters requesting postponement of the final determination must also request an extension of the provisional measures referred to in section 733(d) of the Act from a four-month period until not more than six months. We received requests to postpone the final determination from Petitioners and Xugong on January 23, 2008, from Starbright and TUTRIC on January 28, 2008, and from Bridgestone on January 29, 2008. In addition, Xugong, Starbright and TUTRIC consented to the extension of provisional measures from a four-month period to not longer than six months. Because this preliminary determination is affirmative, the requests for postponement were made by exporters who account for a significant proportion of exports of the subject merchandise, and there is no compelling reason to deny the respondents' requests, we have extended the deadline for issuance of the final determination until the 135th day after the date of publication of this preliminary determination in the **Federal Register** and have extended provisional measures to not longer than six months.

Period of Investigation

The POI is October 1, 2006, through March 31, 2007. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition, which was June 2007.[14]

Scope of Investigation

The products covered by the scope of the investigation are new pneumatic tires designed for off-the-road and off-highway use, subject to exceptions identified below. Certain OTR tires are generally designed, manufactured and offered for sale for use on off-road or off-highway surfaces, including but not limited to, agricultural fields, forests, construction sites, factory and warehouse interiors, airport tarmacs, ports and harbors, mines, quarries, gravel yards, and steel mills. The vehicles and equipment for which certain OTR tires are designed for use include, but are not limited to: (1) Agricultural and forestry vehicles and equipment, including agricultural tractors,[15] combine harvesters,[16] agricultural high clearance sprayers,[17] industrial tractors,[18] log-skidders,[19] agricultural implements, highway-towed implements, agricultural logging, and agricultural, industrial, skid-steers/mini-loaders;[20] (2) construction vehicles and equipment, including earthmover articulated dump products, rigid frame haul trucks,[21] front end loaders,[22] dozers,[23] lift trucks, straddle carriers,[24] graders,[25] mobile cranes, compactors; and (3) industrial vehicles and equipment, including smooth floor, industrial, mining, counterbalanced lift trucks, industrial and mining vehicles other than smooth floor, skid-steers/mini-loaders, and smooth floor off-the-road counterbalanced lift trucks.[26] The foregoing list of vehicles and equipment generally have in common that they are used for hauling, towing, lifting, and/or

[14] *See* 19 CFR 351.204(b)(1).

[15] An agricultural tractor is a four-wheeled vehicle usually with large rear tires and small front tires that is used to tow farming equipment.

[16] A combine harvester is used to harvest crops such as corn or wheat.

[17] An agricultural sprayer is used to irrigate agricultural fields.

[18] An industrial tractor is a four-wheeled vehicle usually with large rear tires and small front tires that is used to tow industrial equipment.

[19] A log skidder has a grappling lift arm that is used to grasp, lift and move trees that have been cut down to a truck or trailer for transport to a mill or other destination.

[20] A skid-steer loader is a four-wheel drive vehicle with the left-side drive wheels independent of the right-side drive wheels and lift arms that lie alongside the driver with the major pivot points behind the driver's shoulders. Skid-steer loaders are used in agricultural, construction and industrial settings.

[21] A haul truck, which may be either rigid frame or articulated (*i.e.*, able to bend in the middle) is typically used in mines, quarries and construction sites to haul soil, aggregate, mined ore, or debris.

[22] A front loader has lift arms in front of the vehicle. It can scrape material from one location to another, carry material in its bucket or load material into a truck or trailer.

[23] A dozer is a large four-wheeled vehicle with a dozer blade that is used to push large quantities of soil, sand, rubble, etc., typically around construction sites. They can also be used to perform ''rough grading'' in road construction.

[24] A straddle carrier is a rigid frame, engine-powered machine that is used to load and offload containers from container vessels and load them onto (or off of) tractor trailers.

[25] A grader is a vehicle with a large blade used to create a flat surface. Graders are typically used to perform ''finish grading.'' Graders are commonly used in maintenance of unpaved roads and road construction to prepare the base course onto which asphalt or other paving material will be laid.

[26] A counterbalanced lift truck is a rigid frame, engine-powered machine with lift arms that has additional weight incorporated into the back of the machine to offset or counterbalance the weight of loads that it lifts so as to prevent the vehicle from overturning. An example of a counterbalanced lift truck is a counterbalanced fork lift truck. Counterbalanced lift trucks may be designed for use on smooth floor surfaces, such as a factory or warehouse, or other surfaces, such as construction sites, mines, *etc.*

loading a wide variety of equipment and materials in agricultural, construction and industrial settings. The foregoing descriptions are illustrative of the types of vehicles and equipment that use certain OTR tires, but are not necessarily all-inclusive. While the physical characteristics of certain OTR tires will vary depending on the specific applications and conditions for which the tires are designed (*e.g.*, tread pattern and depth), all of the tires within the scope have in common that they are designed for off-road and off-highway use. Except as discussed below, OTR tires included in the scope of the petitions range in size (rim diameter) generally but not exclusively from 8 inches to 54 inches. The tires may be either tube-type or tubeless, radial or non-radial, and intended for sale either to original equipment manufacturers or the replacement market. The subject merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (''HTSUS'') subheadings: 4011.20.10.25, 4011.20.10.35, 4011.20.50.30, 4011.20.50.50, 4011.61.00.00, 4011.62.00.00, 4011.63.00.00, 4011.69.00.00, 4011.92.00.00, 4011.93.40.00, 4011.93.80.00, 4011.94.40.00, and 4011.94.80.00. While HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

Specifically excluded from the scope are new pneumatic tires designed, manufactured and offered for sale primarily for on-highway or on-road use, including passenger cars, race cars, station wagons, sport utility vehicles, minivans, mobile homes, motorcycles, bicycles, on-road or on-highway trailers, light trucks, and trucks and buses. Such tires generally have in common that the symbol ''DOT'' must appear on the sidewall, certifying that the tire conforms to applicable motor vehicle safety standards. Such excluded tires may also have the following designations that are used by the Tire and Rim Association:

Prefix letter designations:

- P—Identifies a tire intended primarily for service on passenger cars;
- LT—Identifies a tire intended primarily for service on light trucks; and,
- ST—Identifies a special tire for trailers in highway service.

Suffix letter designations:

- TR—Identifies a tire for service on trucks, buses, and other vehicles with rims having specified rim diameter of nominal plus 0.156″ or plus 0.250″;
- MH—Identifies a tire for Mobile Homes;
- HC—Identifies a heavy duty tire designated for use on ''HC'' 15'' tapered rims used on trucks, buses, and other vehicles. This suffix is intended to differentiate among tires for light trucks, and other vehicles or other services, which use a similar designation.
- Example: 8R17.5 LT, 8R17.5 HC;
- LT—Identifies light truck tires for service on trucks, buses, trailers, and multipurpose passenger vehicles used in nominal highway service; and
- MC—Identifies tires and rims for motorcycles.

The following types of tires are also excluded from the scope: pneumatic tires that are not new, including recycled or retreaded tires and used tires; non-pneumatic tires, including solid rubber tires; tires of a kind used on aircraft, all-terrain vehicles, and vehicles for turf, lawn and garden, golf and trailer applications; and tires of a kind used for mining and construction vehicles and equipment that have a rim diameter equal to or exceeding 39 inches. Such tires may be distinguished from other tires of similar size by the number of plies that the construction and mining tires contain (minimum of 16) and the weight of such tires (minimum 1500 pounds).

Scope Comments

In accordance with the preamble to our regulations,[27] in our initiation notice, we set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 14 calendar days of publication of the initiation notice.[28]

On August 20, 2007, Petitioners, several domestic interested parties, and Guizhou Tyre filed scope comments. Petitioners submitted comments arguing that the existing scope description, which focused on end-use applications, best described the subject goods and that no further HTSUS item-numbers should be added. Guizhou Tyre submitted comments proposing criteria for model matching. Bridgestone submitted comments requesting certain revisions and clarifications to the scope language. Carlisle requested confirmation that lawn and garden tires are excluded from the scope of the investigation. Valmont requested confirmation that mounted OTR tires-and-wheels are excluded from the scope of the investigation. On August 21, 2007, Agri-Fab submitted comments in support of defining the scope based on the end-use application of the subject merchandise.

On August 27, 2007, Petitioners, Guizhou Tyre and Bridgestone submitted rebuttal scope comments. Petitioners argued that the Department should reject Guizhou Tyre's model-match criteria, and that the Department should adopt Bridgestone's proposals for the revision and clarification of the scope language. They also endorsed the comments submitted by Carlisle, Valmont and Agri-Fab. Guizhou Tyre requested that the Department reject Petitioners' interpretation of the scope language to cover agricultural tires with rim diameters of 72 inches and Petitioners' claim that tires used for ''highway-towed implements'' are within the scope of this investigation. Bridgestone argued that the Department should reject Guizhou Tyre's model-match criteria and that the Department should confirm that tires are within the scope whether entered into the United States unmounted or mounted on rims. The Department will review all scope comments submitted in both the antidumping and countervailing duty investigations and will issue a preliminary scope subsequent to the issuance of the preliminary LTFV determination but in time to allow all parties to the proceedings an opportunity to comment for the final determinations.

Selection of Respondents

Section 777 A(c)(1) of the Act directs the Department to calculate individual weighted-average dumping margins for each known exporter and producer of the subject merchandise. Section 777 A(c)(2) of the Act gives the Department discretion, when faced with a large number of exporters/producers, to limit its examination to a reasonable number of such companies if it is not practicable to examine all companies. Where it is not practicable to examine all known producers/exporters of subject merchandise, this provision permits the Department to investigate either (1) a sample of exporters, producers, or types of products that is statistically valid based on the information available to the Department at the time of selection or (2) exporters/producers accounting for the largest volume of the merchandise under investigation that can reasonably be examined. After consideration of the complexities expected to arise in this proceeding and the resources available to it, the Department determined that it was not practicable in this investigation to examine all known producers/exporters of subject merchandise. We determined we had the resources to examine four

[27] *See Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997).

[28] *See Notice of Initiation*, 72 FR at 43592.

exporters. We further determined to limit our examination to the four exporters accounting for the largest volume of the subject merchandise pursuant to section 777 A(c)(2)(B) of the Act. Our analysis indicates that Guizhou Tyre, Xugong, TUTRIC and Starbright are the four largest PRC exporters of subject merchandise by weight, and account for a significant percentage of all exports of the subject merchandise from the PRC during the POI. As a result, we selected the above entities as the mandatory respondents in this investigation.[29]

Non-Market Economy Country

For purposes of initiation, Petitioners submitted an LTFV analysis for the PRC as an NME.[30] In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority.[31] Therefore, we have treated the PRC as an NME country for purposes of this preliminary determination.

Surrogate Country

When the Department is investigating imports from an NME country or producer, section 773(c)(1) of the Act directs it to base normal value (''NV''), in most circumstances, on the NME producer's FOPs valued in a surrogate market-economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs 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 comparable merchandise. The sources of the surrogate values we have used in this investigation are discussed under the ''Normal Value'' section below.

The Department determined that India, Indonesia, Sri Lanka, the Philippines, and Egypt are countries comparable to the PRC in terms of economic development.[32] Once the countries that are economically comparable to the PRC have been identified, we select an appropriate surrogate country by determining whether an economically comparable country is a significant producer of comparable merchandise and whether the data for valuing FOPs is both available and reliable.

We have determined that there is insufficient data from Sri Lanka and have determined it appropriate to use India as a surrogate country pursuant to section 773(c)(4) of the Act based on the following: (A) India is at a level of economic development comparable to that of the PRC, and (B) India is a significant producer of comparable merchandise. Furthermore, we have reliable data from India that we can use to value the FOPs.[33] Thus, we have calculated NV using Indian prices when available and appropriate to value the FOPs of the OTR tires producers. We have obtained and relied upon publicly available information wherever possible.[34]

In accordance with 19 CFR 351.301(c)(3)(i), for the final determination in an antidumping investigation, interested parties may submit within 40 days after the date of publication of the preliminary determination publicly available information to value the FOPs.

Affiliation

Section 771(33) of the Act states that the Department considers the following entities to be affiliated: (A) Members of a family, including brothers and sisters (whether by whole or half blood), spouse, ancestors, and lineal descendants; (B) Any officer or director of an organization and such organization; (C) Partners; (D) Employer and employee; (E) Any person directly or indirectly owning, controlling, or holding with power to vote, five percent or more of the outstanding voting stock or shares of any organization and such organization; (F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person; and (G) Any person who controls any other person and such other person.

For purposes of affiliation, section 771(33) of the Act states that a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person. In order to find affiliation between companies, the Department must find that at least one of the criteria listed above is applicable to the respondents.

To the extent that the affiliation provisions in section 771(33) of the Act do not conflict with the Department's application of separate rates and the statutory NME provisions in section 773(c) of the Act, the Department will determine that exporters and/or producers are affiliated if the facts of the case support such a finding.[35]

Starbright and TUTRIC

Based on our examination of the evidence presented in Starbright, TUTRIC and GPX's submissions, we preliminarily determine that GPX and TUTRIC do not have a close supplier relationship such that one party is reliant upon the other and thus preliminarily determine they are not affiliated parties within the meaning of section 771(33) of the Act.[36] Therefore, these companies will not be treated as a single entity for the purposes of this preliminary determination.

Guizhou Tyre

We preliminarily determine that Guizhou Tyre, Guizhou Advance Rubber Co., Ltd. (''GAR'') and Guizhou Tyre Import and Export Co. (''GTCIE'') are affiliated pursuant to sections 771(33)(B), (E), (F) and (G) of the Act, and that these companies should be treated as a single entity for the purposes of this investigation pursuant to 19 CFR 351.401(f). Based on our examination of the evidence presented in Guizhou Tyre's questionnaire responses, we have determined that: (1) Guizhou Tyre wholly owns both GAR and GTCIE; (2) Guizhou Tyre and GAR are affiliated producers of identical or similar merchandise; and (3) the potential for manipulation of price or production exists with respect to Guizhou Tyre, GAR and GTCIE.[37]

[29] *See* Respondent Selection Memorandum.

[30] *See Notice of Initiation,* 72 FR at 43593.

[31] *See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Artist Canvas from the People's Republic of China,* 71 FR 16116 (March 30, 2006) (''Artist Canvas'').

[32] *See* Office of Policy Surrogate Countries Memorandum.

[33] *Id.* at 2.

[34] *See* Memorandum to Wendy J. Frankel, ''Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Surrogate Value Memorandum'' (February 5, 2008) (''Surrogate Value Memorandum'').

[35] *See Certain Preserved Mushrooms From the People's Republic of China: Preliminary Results of Sixth New Shipper Review and Preliminary Results and Partial Rescission of Fourth Antidumping Duty Administrative Review,* 69 FR 10410, 10413 (March 5, 2004), unchanged in *Final Results and Final Rescission, in Part, of Antidumping Duty Administrative Review: Certain Preserved Mushrooms From the People's Republic of China,* 70 FR 54361 (September 14, 2005).

[36] *See* Memorandum to the File ''Antidumping Duty Investigation on New Pneumatic Off-the-Road Tires from the People's Republic of China: Affiliation and Collapsing of Hebei Starbright Tire Co. Ltd. and Tianjin United Tire & Rubber International Co. Ltd.'' (February 5, 2008).

[37] *See* Memorandum to the File, ''Antidumping Investigation of Certain New Pneumatic Off-The-Road Tires (''OTR tires'') from the People's Republic of China (''PRC''): Affiliation and Collapsing of Guizhou Tyre Co., Ltd., Guizhou Advance Rubber Co., Ltd., and Guizhou Tyre Import and Export Co.,'' (February 5, 2008).

Separate Rates

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 *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 the *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''*).[38] 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 Recipients[39]

1. Wholly Foreign-Owned

Two separate rate companies reported in their SRAs that they are wholly owned by individuals or companies located in a market economy (collectively ''Foreign-Owned SR Applicants''). See ''Preliminary Determination'' section below for companies marked with a ''^'' designating these companies as wholly foreign-owned. Therefore, because they are wholly foreign-owned, and we have no evidence indicating that they are under the control of the PRC, a separate-rate analysis is not necessary to determine whether these companies are independent from government control.[40] Accordingly, we have preliminarily granted a separate rate to these companies.

2. Located in a Market Economy With No PRC Ownership

One of the separate rate companies in this investigation is located outside the PRC (''Foreign SR Applicant''). See ''Preliminary Determination'' section below for companies marked with a ''+'' designating these companies as located in a market economy, with no PRC ownership. Because there is no PRC ownership in any of these companies, we determine that no separate-rate analysis is required for these exporters because they are beyond the jurisdiction of the PRC government.[41] Accordingly, we have preliminarily granted a separate rate to these companies.

3. Joint Ventures Between Chinese and Foreign Companies or Wholly Chinese-Owned Companies

Twenty-four of the separate-rate companies in this investigation 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.[42]

The evidence provided by the mandatory respondents and the PRC SR Recipients 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.

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.[43] 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 evidence placed on the record of this investigation by the PRC SR Recipients demonstrates an absence of *de jure* and *de facto* government control with respect to each of the exporters' exports of the merchandise under investigation, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide*. *See* ''Preliminary Determination'' section below for companies marked with an ''*'' designating these companies as joint ventures between Chinese and foreign companies or wholly Chinese-owned companies that have demonstrated their eligibility for a separate rate.

B. Companies Not Receiving a Separate Rate

The Department is not granting a separate rate to the following separate-rate applicant for the reasons discussed below.

[38] *See also Policy Bulletin 05.1,* which states: ''[w]hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of ''combination rates'' because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question and produced by a firm that supplied the exporter during the period of investigation.'' *See Policy Bulletin 05.1* at 6.

[39] All separate-rate applicants receiving a separate rate are hereby referred to collectively as the ''SR Recipients;'' this includes the mandatory respondents.

[40] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate from the People's Republic of China,* 64 FR 71104–05 (December 20, 1999) (where the respondent was wholly foreign-owned and, thus, qualified for a separate rate).

[41] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China,* 61 FR 19026, 19027 (April 30, 1996), *citing Final Determination of Sales at Less Than Fair Value: Disposable Pocket Lighters from the People's Republic of China,* 60 FR 22359, 22361 (May 5,1995).

[42] *See Sparklers,* 56 FR at 20589.

[43] 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).

Double-Star was unable to demonstrate that it had sales of subject merchandise to the United States. Double-Star explained in its SRA that its reported U.S. sales were in fact sales to another PRC entity that it knew resold the merchandise to the United States. In NME proceedings, we do not examine sales prices between NME entities (*e.g.*, transaction prices between an NME producer of subject merchandise and the NME exporter of subject merchandise) since NME countries are presumed to ''not operate on market principles of cost or pricing structures so that the sales of merchandise in such countr{ies} do not reflect the fair value of the merchandise.'' See section 771 (18) of the Act. Accordingly, non-exporting NME producers of subject merchandise are not eligible for examination as respondents. Based on Double-Star's description of the sales chain for the merchandise it produces, Double-Star is a producer and not an exporter of subject merchandise, and therefore is not eligible to receive a separate rate in this investigation.

Application of Facts Available

Section 776(a)(2) of the Act provides that, 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, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

In reviewing the respondents' original and supplemental questionnaire responses, we have determined that certain reported items require additional supplemental information. We have used the reported values as facts available for this preliminary determination and will issue post-preliminary determination supplemental questionnaires to the respective respondents to address these issues.

The PRC-Wide Entity

The record evidence indicates there were more exporters of OTR tires from the PRC during the POI than those that responded to the Q&V questionnaire or the full antidumping questionnaire.[44] Specifically, we issued the Q&V questionnaire to 94 identified PRC exporters of the subject merchandise but received responses from only 30, with one reporting that it made no shipments of subject merchandise during the POI. The other 29 responses did not account for all imports into the United States from the PRC during the POI. Further, evidence on the record indicates that the 94 identified PRC exporters of subject merchandise received our Q&V questionnaire. See Memorandum to the File, ''Quantity and Value (''Q&V'') Tracking,'' dated September 4, 2007. Based on the above facts, the Department preliminarily determines that there were exports of the subject merchandise under investigation from PRC producers/exporters that did not respond to the Department's questionnaire, and we are treating these PRC producers/exporters as part of the countrywide entity. As a result, use of facts available pursuant to section 776(a)(2)(A) of the Act is warranted for the PRC entity.[45]

The Department will consider all margins on the record at the time of the final determination for the purpose of determining the most appropriate AFA rate for the PRC-wide entity.[46]

Selection of the Adverse Facts Available Rate

Section 776(b) of the Act provides that if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information, the Department may employ adverse inferences.[47] We find that, because the PRC-wide entity did not respond to our request for information, it 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.

In deciding which facts to use as AFA, section 776(b) of the Act and 19 C.F.R. 351.308(c)(1) provide that the Department may rely on information derived from (1) the petition, (2) a final determination in the investigation, (3) any previous review or determination, or (4) any information placed on the record. In selecting a rate for AFA, the Department selects a rate 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.[48] It is further the Department's practice to select a rate that ensures ''that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.[49]

Generally, the Department finds selecting the highest rate in any segment of the proceeding as AFA to be appropriate.[50] The Court of International Trade (''CIT'') and the Court of Appeals for the Federal Circuit (''Fed. Cir.'') have affirmed decisions to select the highest margin from any prior segment of the proceeding as the AFA rate on numerous occasions.[51]

In choosing the appropriate balance between providing respondents with an incentive to respond accurately and imposing a rate that is reasonably related to the respondents' prior commercial activity, selecting the highest prior margin ''reflects a common sense inference that the highest prior margin is the most probative evidence of current margins, because, if it were not so, the importer, knowing of the rule, would have produced current information showing the margin to be less.[52]

As AFA, we have preliminarily assigned to the PRC-wide entity a rate of 210.48 percent, the highest calculated rate from the petition. The Department preliminarily determines that this information is the most appropriate from the available sources to effectuate the purposes of AFA. The Department's reliance on the petition rate to

[44] *See* Respondent Selection Memorandum at 2.

[45] *See, e.g., Artist Canvas,* 71 FR 16116 (March 30, 2006).

[46] *See Preliminary Determination of Sales at Less Than Fair Value: Saccharin from the People's Republic of China,* 67 FR 79049, 79053–54 (December 27, 2002), unchanged in *Final Determination of Sales at Less Than Fair Value: Saccharin From the People's Republic of China,* 68 FR 27530 (May 20, 2003).

[47] *See, e.g., Artist Canvas,* 71 FR 16116, 16118 (March 30, 2006). *See also* Statement of Administrative Action accompanying the URAA, H.R. Rep No. 103–316 (''SAA'') at 870.

[48] *See Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors From Taiwan,* 63 FR 8909, 8932 (February 23, 1998).

[49] *See* SAA at 870. *See also, Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the Seventh Administrative Review; Final Results of the Eleventh New Shipper Review,* 70 FR 69937, 69939 (November 18, 2005).

[50] *See, e.g., Certain Cased Pencils from the People's Republic of China; Notice of Preliminary Results of Antidumping Duty Administrative Review and Intent to Rescind in Part,* 70 FR 76755, 76761 (December 28, 2005).

[51] *See Rhone Poulenc, Inc.* v. *United States,* 899 F. 2d 1185, 1190 (Fed. Cir. 1990) (affmning the Department's presumption that the highest margin was the best information of current margins) (''Rhone Poulenc''); *NSK Ltd.* v. *United States,* 346 F. Supp. 2d 1312, 1335 (CIT 2004) (affirming a 73.55 percent total AFA rate, the highest available dumping margin from a different respondent in an LTFV investigation); *Kompass Food Trading International* v. *United States,* 24 CIT 678,683 (2000) (affirming a 51.16 percent total AFA rate, the highest available dumping margin from a different, fully cooperative respondent); and *Shanghai Taoen International Trading Co., Ltd.* v. *United States,* 360 F. Supp. 2d 1339, 1348 (CIT 2005) (affirming a 223.01 percent total AFA rate, the highest available dumping margin from a different respondent in a previous administrative review).

[52] *See Rhone Poulenc,* 899 F. 2d at 1190.

determine an AFA rate is subject to the requirement to corroborate secondary information.[53]

Corroboration

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation as facts available, it must, to the extent practicable, corroborate that information from independent sources reasonably at its disposal. Secondary information is described in the *SAA* as ''information derived from the petition that gave rise to the investigation or review, the final determination concerning subject merchandise, or any previous review under section 751 concerning the subject merchandise.'' [54] The *SAA* provides that to ''corroborate'' means simply that the Department will satisfy itself that the secondary information to be used has probative value.[55] The *SAA* also states that independent sources used to corroborate may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation.[56] To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used.[57]

The AFA rate that the Department used is from the petition.[58] Petitioners' methodology for calculating the export price (''EP'') and NV in the petition is discussed in the initiation notice.[59] To corroborate the AFA margin we have selected, we compared that margin to the margins we found for the respondents. We found that the margin of 210.48 percent has probative value because it is in the range of margins we found for the mandatory respondents. Accordingly, we find that the rate of 210.48 percent is corroborated within the meaning of section 776(c) of the Act.

Consequently, we are applying a single antidumping rate—the PRC-wide rate—to producers/exporters that failed to respond to the Department's antidumping questionnaire, and/or the Q&V questionnaire, or did not apply for a separate rate, as applicable. This rate will also apply to separate-rate applicants which did not demonstrate entitlement to a separate rate.[60] The PRC-wide rate applies to all entries of the merchandise under investigation except for entries from mandatory respondents Guizhou Tyre, Starbright, TUTRIC and Xugong, and from the separate-rate recipients. These companies and their corresponding antidumping duty cash deposit rates are listed below in the ''Preliminary Determination'' section of this notice.

Margin for the Separate-Rate Applicants

Several exporters of OTR tires from the PRC, listed above, were not selected as mandatory respondents in this investigation but have applied for separate-rate status and provided information to the Department for this purpose. We have established a weighted-average margin for all separate-rate recipients, based on the rates we calculated for the mandatory respondents, excluding any rates that are zero, *de minimis*, or based entirely on AFA. That rate is 24.75 percent. The exporters given a separate rate are identified by name in the ''Preliminary Determination'' section of this notice.

Fair Value Comparisons

To determine whether sales of OTR tires to the United States by the mandatory respondents were made at LTFV, we compared EP or CEP to NV, as described in the ''Export Price,'' ''Constructed Export Price'' and ''Normal Value'' sections of this notice.

Export Price

In accordance with section 772(a) of the Act, EP is the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under section 772(c) of the Act. In accordance with section 772(a) of the Act, we used EP for TUTRIC, Xugong and certain of Guizhou Tyre's U.S. sales because the subject merchandise was sold directly to the unaffiliated customers in the United States prior to importation and because CEP was not otherwise indicated. Xugong claimed that it sold certain sales of subject merchandise through a U.S. affiliate (*i.e.*, API) in the United States and Xugong reported these sales as CEP sales. After examining evidence on the record, we have determined that Xugong is not affiliated with API within the meaning of the Act and regulations.[61] Thus, for the preliminary determination, we have classified Xugong's sales to API as EP sales.

We calculated EP based on the packed FOB, CFR, CNF, CIF or delivered prices to unaffiliated purchasers in, or for exportation to, the United States. We made deductions, as appropriate, for any movement expenses (*e.g.*, foreign inland freight from the plant to the port of exportation, foreign inland insurance, domestic brokerage) in accordance with section 772(c)(2)(A) of the Act,[62] To value foreign inland insurance, we used the average insurance expenses reported in the public version of Agro Dutch's May 24, 2005 response submitted in the February 2004–January 2005 administrative review of the antidumping duty order on certain preserved mushrooms from India.[63]

Constructed Export Price

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 sections 772(c) and (d) of the Act. In accordance with section

[53] *See* the ''Corroboration'' section below.

[54] *See* SAA at 870.

[55] *See id.*

[56] *See id.*

[57] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan,* and *Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews,* 61 FR 57391, 57392 (November 6, 1996), unchanged in *Final Results of Antidumping Duty Administrative Reviews and Termination in Part: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan,* and *Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan,* 62 FR 11825 (March 13, 1997).

[58] *See* ''Antidumping Duty Investigation Initiation Checklist: Certain Off-the-Road Tires from the People's Republic of China (PRC)'' at 10. *See Notice of Initiation,* 72 FR at 43593.

[59] *See Notice of Initiation,* 72 FR at 43593.

[60] *See, e.g., Final Determination of Sales at Less Than Fair Value: Synthetic Indigo from the People's Republic of China,* 65 FR 25706, 25707 (May 3, 2000).

[61] *See* section 771(33) of the Act and 19 CFR 351.102(b).

[62] For a detailed description of all adjustments, see Memorandum to the File, ''Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Analysis Memorandum for the Preliminary Determination: Tianjin United Tire & Rubber International Co., Ltd. ('TUTRIC')'' (February 5, 2008) (''TUTRIC Preliminary Analysis Memorandum''); Memorandum to the File, ''Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Analysis Memorandum for the Preliminary Determination: Guizhou Tyre Co., Ltd. ('GTC') and its affiliates (collectively 'Guizhou Tyre')'' (February 5, 2008) (''Guizhou Tyre Preliminary Analysis Memorandum''); and ''Analysis Memorandum for the Preliminary Determination: Xuzhou Xugong Tyre Co., Ltd. ('Xugong')'' (February 5, 2008) (''Xugong Preliminary Analysis Memorandum'').

[63] *See Certain Preserved Mushrooms From India: Final Results of Antidumping Duty Administrative Review,* 70 FR 37757 (June 30, 2005). *See also* Surrogate Value Memorandum.

772(b) of the Act, we used CEP for Starbright's and certain of Guizhou Tyre's sales because the sales were made by the U.S. affiliate in the United States.

We calculated CEP based on delivered prices to unaffiliated purchasers in the United States. In accordance with section 772(d)(1) of the Act, we made deductions from the starting price for billing adjustments, movement expenses, discounts and rebates. We made deductions from the U.S. sales price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These included, where applicable, foreign inland freight and insurance from the plant to the port of exportation, foreign inland insurance, ocean freight, marine insurance, U.S. Customs duty, U.S. brokerage and handling, U.S. inland freight from port to the warehouse, warehousing expense and U.S. inland freight from the warehouse to the customer. In accordance with section 772(d)(1) of the Act, the Department deducted, where applicable, commissions, credit expenses, warranty expenses, inventory carrying costs and indirect selling expenses from the U.S. price, all of which relate to commercial activity in the United States. In addition, we deducted CEP profit in accordance with sections 772(d)(3) and 772(f) of the Act. In accordance with section 773(a) of the Act, we calculated Starbright's credit expenses and inventory carrying costs based on the Federal Reserve short-term rate.[64]

Adjustment for Domestic Subsidies

On January 28, 2008, the Bureau of Fair Trade for Imports & Exports (''BOFT'') of the Ministry of Commerce of the PRC submitted a request that the Department adjust U.S. prices[65] for what it claims are double remedies. While the Department has always been determined to prevent any double remedies from arising (*see, e.g., Wheatland Tube* v. *United States*, 495 F.3d 1355, 1363 (Fed. Cir. 2007), BOFT offers no evidence supporting its argument that domestic subsidies automatically lower prices (including export prices) *pro rata*. Instead, BOFT argues that U.S. law embodies the presumption that domestic subsidies lower prices *pro rata*. We do not agree. First, despite addressing the issue of parallel AD duties and CVDs directly, and explicitly requiring that the amount of any CVDs to offset export subsidies be added to U.S. price, Congress provided no adjustment for CVDs imposed by reason of domestic subsidies in NME proceedings. Second, we fmd the assertion that the AD law embodies the presumption that domestic subsidies automatically lower prices, *pro rata*, to be baseless.[66]

BOFT is correct in noting that the purpose of adding CVDs to offset export subsidies to U.S. prices is to prevent AD duties from coinstituting a second remedy for export subsidies. BOFT is also correct that the apparent premise of this adjustment is the presumption that export subsidies automatically lower the price of exported merchandise, *pro rata*, increasing dumping margins accordingly. While this presumption may be debatable, it is not unreasonable, given the typically direct connection between export subsidies and exports. In any event, the statute plainly requires the Department to add the full amount of CVDs imposed to offset export subsidies to the U.S. price. *See* section 772(c)(1)(C) of the Act.

The premise of BOFT's claimed adjustment is that the AD law embodies the presumption that domestic subsidies automatically lower export prices, *pro rata* (while having no effect upon normal value, as determined in NME proceedings). BOFT provides no basis for this presumption. Whereas the connection between export subsidies and export prices is direct, the connection between domestic subsidies and export price is indirect and subject to a number of variables. Consequently, presuming that domestic subsidies automatically lower export prices, *pro rata*, would be speculative.[67]

More importantly, we find no indication in the statute or legislative history that Congress harbored any presumption about the effect of domestic subsidies upon export prices, let alone the presumption that they automatically reduce export prices, *pro rata*. The Senate Report accompanying the 1979 legislation states simply that, for domestic subsidies (where the situation with respect to the domestic and export markets is the same) no adjustment to U.S. price is appropriate. *See* Trade Agreement Act of 1979, Report of the Committee on Finance on H.R. 4537, Senate Report No. 96–249, 96th Cong. (July 17,1979), at 79. In so stating, Congress may have presumed that domestic subsidies had no effect on prices, had the same (if uncertain) effect on domestic and export prices, or may have presumed nothing. Thus, neither the statute nor the Senate Report indicates that the statute embodies the presumption that domestic subsidies automatically lower prices (including export prices) *pro rata*.

BOFT asserts that the presumption that domestic subsidies lower prices, *pro rata*, is the whole basis for imposing CVDs upon such subsidies. That is not correct. While subsidies unquestionably benefit their recipients, it is by no means certain that those recipients automatically respond to subsidies by lowering their prices, *pro rata*, as opposed to investing in capital improvements, retiring debt, or any number of other uses.

BOFT also argues that the fact that the Department uses only surrogate values that are ''subsidy free'' demonstrates that the Department believes subsidy recipients automatically lower their prices *pro rata*. This is also incorrect. The House Report cited by BOFT establishes only that Congress believed that Commerce should avoid using values that may have been affected by dumping or subsidies. Similarly, the Department's compliance with Congress' direction does not establish that the Department has made any assumption about the impact of subsidies upon prices. The Department has acknowledged simply that the existence of dumping or subsidies may taint the values upon which it otherwise would rely.

BOFT also argues that the Department previously has assumed that benefits from domestic subsidies are fully passed though into home-market and export prices. This is misleading. The more accurate statement would be that, when it has considered the issue, the Department has sometimes presumed that, whatever the effect, if any, of domestic subsidies upon the prices subsequently charged by their recipients, that effect would be the same for domestic prices and export prices.[68]

BOFT also argues that, by recognizing that subsidies may have no (or an unpredictable) effect upon prices subsequently charged by their recipients in NME countries, the Department is conceding that it is not possible to measure subsidies in an NME country. This is incorrect. In both market

[64] For a detailed description of all adjustments, *see* Memorandum to the File, ''Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Analysis Memorandum for the Preliminary Determination: Hebei Starbright Tire Co., Ltd. ('Starbright')'' (February 5, 2008) (''Starbright Preliminary Analysis Memorandum'').

[65] Section 772(c)(l)(C) of the Act directs the Department to add the amount of CVDs imposed to offset *export subsidies* to the U.S. price. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Korea,* 67 FR 62124, 62165 (October 3, 2002), where we stated, ''We believe the economic theory implicit in section 772(c)(1)(C) of the Act should also generally apply to our cash deposit calculations in an investigation.''

[66] *See CFS, I&D Memo at Comment 2.*

[67] *See CFS, I&D Memo at Comment 2.*

[68] *See CFS, I&D Memo at Comment 2.*

economy and NME countries, identifying subsidies involves measuring benefits received by a firm. Whether such firms respond to subsidies received by lowering their prices, *pro rata*, would be a completely separate inquiry in either a market economy or NME country.

Because we do not accept BOFT's assertion that the AD law embodies the presumption that domestic subsidies automatically lower export prices, *pro rata*, and that is the only basis on which BOFT has claimed an adjustment, we must deny BOFT's request.

Normal Value

We compared NV to weighted-average EPs and CEPs in accordance with section 777A(d)(1) of the Act. Further, section 773(c)(1) of the Act provides that the Department shall determine the NV using an FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department bases NV on the FOPs because the presence of government controls on various aspects of these economies renders price comparisons and the calculation of production costs invalid under its normal methodologies.

The Department's questionnaire requires that the respondent provide information regarding the weighted-average FOPs across all of the company's plants that produce the subject merchandise, not just the FOPs from a single plant. This methodology ensures that the Department's calculations are as accurate as possible.[69] The Department calculated the FOPs using the weighted-average factor values for all of the facilities involved in producing the subject merchandise for each exporter. The Department calculated NV for each matching control number (''CONNUM'') based on the factors of production reported from each of the exporters' suppliers and then averaged the supplier-specific NV together, weighted by production quantity, to derive a single, weighted-average NV for each CONNUM exported by each exporter.

Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on FOPs reported by respondents for the POI. To calculate NV, we multiplied the reported per-unit factor-consumption rates by publicly available Indian surrogate values. In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to Indian import surrogate values a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory of production or the distance from the nearest seaport to the factory of production, where appropriate. This adjustment is in accordance with the Fed. Cir. decision in *Sigma Corp.* v. *United States*, 117 F. 3d 1401, 1407–1408 (Fed. Cir. 1997).

The mandatory respondents reported that certain of their reported raw material inputs were sourced from a market-economy country and paid for in market-economy currencies. Pursuant to 19 CFR 351.408(c)(1), when a mandatory respondent sources inputs from a market-economy supplier in meaningful quantities (*i.e.*, not insignificant quantities), we use the actual price paid by respondents for those inputs, except when prices may have been distorted by findings of dumping by the PRC and/or subsidies.[70] Guizhou Tyre's, Starbright's, and TUTRIC's reported information demonstrates that the quantities of certain raw materials purchased from market-economy suppliers are significant. Where we found market economy purchases to be in significant quantities, in accordance with our statement of policy as outlined in *Antidumping Methodologies: Market Economy Inputs*, we have used the actual purchases of these inputs to value the inputs.[71] For a detailed description of all actual values used for market-economy inputs, see the company-specific analysis memoranda dated February 5, 2008. Where the quantity of the input purchased from market-economy suppliers is insignificant, the Department will not rely on the price paid by an NME producer to a market-economy supplier because it cannot have confidence that a company could fulfill all its needs at that price. For Guizhou Tyre, and TUTRIC, the Department found certain of their inputs purchased from market-economy suppliers to be insignificant.[72]

For this preliminary determination, in accordance with past practice, we used import values from the World Trade Atlas® online (''Indian Import Statistics''), which were published by the Directorate General of Commercial Intelligence and Statistics, Ministry of Commerce of India, which were reported in rupees and are contemporaneous with the POI to calculate surrogate values for the mandatory respondents' material inputs. Where we found Indian Import Statistics to be unreliable, we used Indonesian Import Statistics from the World Trade Atlas.[73] In selecting the best available information for valuing FOPs in accordance with section 773(c)(1) of the Act, the Department's practice is to select, to the extent practicable, surrogate values which are non-export average values, most contemporaneous with the POI, product-specific, and tax-exclusive.[74]

Where we could not obtain publicly available information contemporaneous with the POI with which to value FOPs, we adjusted the surrogate values using, where appropriate, the Indian Wholesale Price Index (''WPI'') as published in the *International Financial Statistics* of the International Monetary Fund (''IMF'').

Furthermore, with regard to the Indian import-based surrogate values, we have disregarded import prices that we have reason to believe or suspect may be subsidized. We have reason to believe or suspect that prices of inputs from Indonesia, South Korea, and Thailand may have been subsidized. We have found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies and, therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized.[75] We are also directed by

[69] *See, e.g., Final Determination of Sales at Less Than Fair Value and Critical Circumstances: Certain Malleable Iron Pipe Fittings From the People's Republic of China,* 68 FR 61395 (October 28, 2003), and the accompanying Issues and Decision Memorandum at Comment 19.

[70] *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27366 (May 19, 1997).

[71] *See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716 (October 19, 2006) (''*Antidumping Methodologies: Market Economy Inputs*'').

[72] *See* Guizhou Tyre Preliminary Analysis Memorandum, Starbright Preliminary Analysis Memorandum, TUTRIC Preliminary Analysis Memorandum, and Xugong Preliminary Analysis Memorandum.

[73] *See* Surrogate Value Memorandum.

[74] *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).

[75] *See 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*

the legislative history not to conduct a formal investigation to ensure that such prices are not subsidized.[76] Rather, Congress directed the Department to base its decision on information that is available to it at the time it makes its determination. Therefore, we have not used prices from these countries in calculating the Indian import-based surrogate values. In instances where a market economy input was obtained solely from suppliers located in these countries, we used Indian import-based surrogate values to value the input. In addition, we excluded Indian import data from NME countries from our surrogate value calculations.[77]

We used Indian transport information in order to value the inland freight cost of the raw materials. The Department determined the best available information for valuing truck freight to be from *http://www.infreight.com* and rail freight to be from *http://www.indianrailways.gov.in*. This source provides daily rates from six major points of origin to five destinations in India. The Department obtained a price quote on the first day of each month from June 2005 to May 2006 from each point of origin to each destination and averaged the data accordingly. We adjusted these rates for inflation.

Consistent with the Department's practice, we used two sources to calculate a surrogate value for domestic brokerage expenses.[78] These data were averaged with the February 2004–January 2005 data contained in the May 24, 2005, public version of Agro Dutch Industries Limited's (''Agro Dutch'') response submitted in the administrative review of the antidumping duty order on certain preserved mushrooms from India.[79] The brokerage expense data reported by Essar Steel and Agro Dutch in their public versions are ranged data. The Department first derived an average per-unit amount from each source. Then the Department adjusted each average rate for inflation. Finally, the Department averaged the two per-unit amounts to derive an overall average rate for the POI.

For direct, indirect, and packing labor, consistent with 19 CFR 351.408(c)(3), we used the PRC regression-based wage rate as reported on Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised in November 2005, available at *http://ia.ita.doc.gov/wages/index.html*. Because 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 the respondent. If the NME wage rates are updated by the Department prior to issuance of the final determination, we will use the updated wage rate in the final LTFV determination.

To value electricity, we used data from the International Energy Agency *Key World Energy Statistics* (2003 edition). Because the value was not contemporaneous with the POI, we adjusted the rate for inflation.

The Department valued water using data from the Maharashtra Industrial Development Corporation (*http://www.midcindia.org*) because it includes a wide range of industrial water tariffs. This source provides 386 industrial water rates within the Maharashtra province from June 2003: 193 for the ''inside industrial areas'' usage category and 193 for the ''outside industrial areas'' usage category. Because the value was not contemporaneous with the POI, we adjusted the rate for inflation.

We valued steam using the January–June 1999 Indian price data from PR Newswire Association Inc. following the methodology in *Goldlink Industries Co., Ltd., Trust Chem Co., Ltd., Tianjin Hanchem International Trading Co., Ltd.* v. *United States*, 431 F. Supp. 2d 1323 (CIT 2006).[80] Because the information was not contemporaneous with the POI, we applied the appropriate WPI inflator.[81]

To value factory overhead, selling, general, and administrative expenses, and profit, we used audited financial statements for the year ending March 31, 2007, of Apollo Tyres Ltd., CEAT Limited, Falcon Tyres Ltd., and TVS Srichakra Limited, and the financial statement for the year ending December 31, 2006, of Goodyear India Limited, producers of the subject merchandise from India.[82] The Department may consider other publicly available financial statements for the final determination, as appropriate.

Guizhou Tyre claimed that it produced five separate types of by-products consisting of the scrap of steel curtain, rubber, tires, steel wire for beading and nylon.[83] It claimed that it sold all five types of by-product. However, it failed to demonstrate that it sold scrap to unaffiliated purchasers.[84] Therefore, for the preliminary determination, we have not granted a by-product offset for any of Guizhou Tyre's claimed by-products.[85]

In its questionnaire responses, Xugong stated that it generates a ''waste'' by-product which it sold during the POI. However, record evidence indicates that Xugong's single reported waste by-product is comprised of four separate by-products (*i.e.*, steel wire, rubber, and two different types of fabric). Further, Xugong did not demonstrate actual sales of the claimed waste product during the POI. Because Xugong reported different types of by-products in a cumulative by-product field, reported four different surrogate values to one per-unit consumption of waste, and did not demonstrate actual sales of the individual waste products at issue, we are not able to grant Xugong's requested by product offset.[86]

On January 17, 2008, Starbright requested that the Department grant it a CEP offset for differences in level of trade between its U.S. sales and those of the surrogate producers, under section 773(a)(7)(B) of the Act. Section 773(a)(7)(B) of the Act allows for a reduction in NV when NV is established at a more advanced stage of distribution than the level of trade of the CEP, but where the available data do not provide an appropriate basis on which to calculate—under section 773(a)(7)(A) of the Act—a level-of-trade adjustment. In

Republic of China, 69 FR 20594 (April 16, 2004), and accompanying Issues and Decision Memorandum at Comment 7.

[76] *See Omnibus Trade and Competitiveness Act of 1988, Conference Report to Accompanying H.R. 3, H.R. Rep.* 100–576 at 590 (1988).

[77] For a detailed description of all surrogate values used for each respondent, *see* Surrogate Value Memorandum.

[78] *See, e.g., Preliminary Determination of Sales at Less Than Fair Value, Affirmative Critical Circumstances, In Part, and Postponement of Final Determination: Certain Lined Paper Products from the People's Republic of China*, 71 FR 19695, 19704 (April 17, 2006) (utilizing these same data, unchanged for the final determination); *Final Determination of Sales at Less Than Fair Value, Affirmative Critical Circumstances, In Part, and Postponement of Final Determination: Certain Lined Paper Products from the People's Republic of China*, 71 FR 53079 (September 8, 2006). The Department averaged December 2003–November 2004 data contained in the February 28, 2005, public version of Essar Steel's response submitted in the antidumping duty administrative review of hot-rolled carbon steel flat products from India. *See also Certain Hot-Rolled Carbon Steel Flat Products From India: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 2018 (January 12, 2006) (unchanged in the final results); *Certain Hot-Rolled Carbon Steel Flat Products From India: Final Results of Antidumping Duty Administrative Review*, 71 FR 40694 (July 18, 2006).

[79] *See Certain Preserved Mushrooms From India: Final Results of Antidumping Duty Administrative Review*, 70 FR 37757 (June 30, 2005). *See also* Surrogate Value Memorandum.

[80] *See* Surrogate Value Memorandum.

[81] *See* Surrogate Value Memorandum.

[82] *See* Surrogate Value Memorandum.

[83] *See* Guizhou DQR pg. 15.

[84] *See* Section D pg. 5, Exhibit D–9.

[85] *See* Guizhou Tyre Preliminary Analysis Memorandum.

[86] *See* Xugong Preliminary Analysis Memorandum.

applying the CEP offset, the Department reduces NV by the amount of indirect selling expenses incurred in the country in which NV is determined on sales of the foreign like product, but not more than the amount of such expenses for which a deduction is made under section 772(d)(1)(D) of the Act (''additional adjustments to constructed export price'').

In NME cases, the Department calculates NV pursuant to section 773(c) of the Act. Consequently, normal value for NME cases is determined under a different subsection of the statute than normal value for ME cases. See sections 772(a) and 772(e) of the Act. In the subsection of the statute regarding NME NV, there is no provision for allowing either a level-of-trade adjustment or, by extension, a CEP offset. Furthermore, even if the statute contemplated considering such an adjustment for NME cases, the Department would have to apply the same standards as those used in market economy cases. In other words, the Department would have to issue a level-of-trade questionnaire to determine selling functions conducted in the country in which NV is determined on sales of the foreign like product. Because NV in an NME case is calculated based on surrogate valuation of FOPs, we do not analyze selling functions of the PRC respondent. Consequently, to determine whether a CEP offset is warranted, the Department would have to issue a level-of-trade questionnaire to surrogate financial companies, which is not practicable because they are not parties to the proceeding, and thus not subject to verification. Furthermore, the Department allows parties to provide surrogate financial statements after its preliminary findings, thus to issue a level-of-trade questionnaire after the preliminary findings would not allow ample time for parties to the proceeding to effectively comment on the responses, and would hinder the Department's ability to meet its statutory deadlines for completion of the proceeding.

Further, we have not made circumstance-of-sale (''COS'') adjustments as requested by Starbright for expenses borne by GPX, its U.S. affiliate, on sales of subject merchandise in the United States. Under the statute, such expenses are direct expenses incurred in the United States and are properly deducted from starting price to arrive at CEP. Because they are borne by the U.S. affiliate and are not incurred in the foreign country, such expenses cannot form the basis of any COS adjustments pursuant to section 773(a)(6)(C) of the Act.[87]

In a market economy proceeding, the Department, in calculating NV, will make COS adjustments by offsetting expenses incurred by the exporter on sales to one market with the corresponding direct or indirect selling expenses incurred by that same exporter on sales to the other. For example, if an exporter paid commissions on its sales in the home market but not on its sales to the United States, the Department would deduct the home market commissions from NV but add to NV the exporter's commissions and/or indirect selling expenses incurred on its sales to the United States.[88]

Applying that example to this NME investigation, however, in order to make a COS adjustment, with respect to commissions paid by one or more of the surrogate producers[89] but not paid by Starbright, the Department would have to collect and rely on data with respect to Starbright's indirect selling expenses incurred in the PRC for sales to the United States. Such expenses, however, would be based on internal PRC pricing, which the Department does not utilize for purposes of antidumping calculations because such pricing reflects internal transactions in an NME country, which are considered unreliable. *See* section 771(18)(A) of the Act. *See also Shandong Huarong Machinery Co., Ltd.* v. *United States,* 2007 WL 4633315 at 13 (CIT Nov. 20, 2007).

Thus, while Starbright assumes that the Department's practice of making COS adjustments in market economy cases can be replicated in the NME context, we are precluded from making parallel adjustments in NME cases where the necessary data to calculate such adjustments cannot be relied upon due to the fact that the relevant expenses are incurred and priced under NME conditions. Therefore, for the reasons cited above, we find that we are precluded from making COS adjustments in this investigation.

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 from Guizhou Tyre, Starbright, TUTRIC and Xugong upon which we will rely in making our final determination. Additionally, we may also verify the information on the record submitted by selected separate-rate applicants.

Combination Rates

In the *Notice of Initiation,* the Department stated that it would calculate combination rates for certain respondents that are eligible for a separate rate in this investigation.[90] This change in practice is described in *Policy Bulletin 05.1.*[91]

[87] *See Torrington Co.* v. *United States,* 156 F.3d 1361, 1363 (Fed. Cir. 1998).

[88] We note that with the limited exception of certain freight expenses, Starbright has provided no record evidence in this investigation regarding specific expenses incurred in the PRC by the foreign exporter.

[89] The Department's practice is not to analyze information or amounts utilized to construct a surrogate producer's financial statements as the surrogate producer is not a party to the proceeding and the books and records supporting these financial statements are not subject to verification.

[90] *See Notice of Initiation,* 72 FR at 43595.

[91] *See* Footnote 36, *supra.*

Preliminary Determination

The weighted-average dumping margins are as fol1ows:

Exporter	Producer	Margin (in percent)
Guizhou Tyre Co., Ltd.*	Guizhou Advance Rubber	16.35
Guizhou Tyre Co., Ltd.*	Guizhou Tyre Co., Ltd	16.35
Hebei Starbright Co., Ltd.^	Hebei Starbright Co., Ltd	19.73
Tianjin United Tire & Rubber International Co., Ltd. (“TUTRIC”)*.	Tianjin United Tire & Rubber International Co., Ltd. (“TUTRIC”).	10.98
Xuzhou Xugong Tyre Company Limited*	Xuzhou Xugong Tyre Company Limited	51.81
Aeolus Tyre Co., Ltd.*	Aeolus Tyre Co., Ltd	24.75
Double Coin Holdings Ltd.*	Double Coin Holdings Ltd	24.75
Double Coin Holdings Ltd.*	Double Coin Group Rugao Tyre Co., Ltd	24.75
Double Coin Holdings Ltd.*	Double Coin Group Shanghai Donghai Tyre Co., Ltd	24.75
Double Happiness Tyre Industries Corp., Ltd.*	Double Happiness Tyre Industries Corp., Ltd	24.75
Jiangsu Feichi Co., Ltd.*	Jiangsu Feichi Co., Ltd	24.75
KS Holding Limited^	Oriental Tyre Technology Ltd	24.75
KS Holding Limited^	Shandong Taishan Tyre Co., Ltd	24.75
KS Holding Limited^	Xu Zhou Xugong Tyres Co., Ltd	24.75
Laizhou Xiongying Rubber Industry Co., Ltd.*	Laizhou Xiongying Rubber Industry Co., Ltd	24.75
Oriental Tyre Technology Limited+	Midland Off the Road Tire Co., Ltd	24.75
Oriental Tyre Technology Limited+	Midland Specialty Tire Co., Ltd	24.75
Oriental Tyre Technology Limited+	Xuzhou Hanbang Tyres Co., Ltd	24.75
Qingdao Etyre International Trade Co., Ltd.*	ShanGong Xingua Tyre Co. Ltd	24.75
Qingdao Etyre International Trade Co., Ltd.*	Shandong Xingyuan International Trade Co. Ltd	24.75
Qingdao Etyre International Trade Co., Ltd.*	Shandong Xingyuan Rubber Co. Ltd	24.75
Qingdao Free Trade Zone Full-World International Trading Co., Ltd.*	Qingdao Eastern Industrial Group Co., Ltd	24.75
Qingdao Free Trade Zone Full-World International Trading Co., Ltd.*	Qingdao Qihang Tyre Co., Ltd	24.75
Qingdao Free Trade Zone Full-World International Trading Co., Ltd.*	Qingdao Shuanghe Tyre Co., Ltd	24.75
Qingdao Free Trade Zone Full-World International Trading Co., Ltd.*	Qingdao Yellowsea Tyre Factory	24.75
Qingdao Free Trade Zone Full-World International Trading Co., Ltd.*	Shandong Zhentai Tyre Co., Ltd	24.75
Qingdao Hengda Tyres Co., Ltd.*	Qingdao Hengda Tyres Co., Ltd	24.75
Qingdao Milestone Tyre Co., Ltd.*	Qingdao Shuanghe Tyre Co., Ltd	24.75
Qingdao Milestone Tyre Co., Ltd.*	Shandong Zhentai Tyre Co., Ltd	24.75
Qingdao Milestone Tyre Co., Ltd.*	Shifeng Double-Star Tire Co., Ltd	24.75
Qingdao Milestone Tyre Co., Ltd.*	Weifang Longtai Tyre Co., Ltd	24.75
Qingdao Qinghang Tyre Co., Ltd.*	Qingdao Qinghang Tyre Co., Ltd	24.75
Qingdao Qizhou Rubber Co., Ltd.*	Qingdao Qizhou Rubber Co., Ltd	24.75
Qingdao Sinorient International Ltd.*	Qingdao Hengda Tyres Co., Ltd	24.75
Qingdao Sinorient International Ltd.*	Shifeng Double-Star Tire Co., Ltd	24.75
Qingdao Sinorient International Ltd.*	Tenzhou Broncho Tyre Co., Ltd	24.75
Shandong Huitong Tyre Co., Ltd.*	Shandong Huitong Tyre Co., Ltd	24.75
Shandong Jinyu Tyre Co., Ltd.*	Shandong Jinyu Tyre Co., Ltd	24.75
Shandong Taishan Tyre Co., Ltd.*	Shandong Taishan Tyre Co., Ltd	24.75
Shandong Wanda Boto Tyre Co., Ltd.*	Shandong Wanda Boto Tyre Co., Ltd	24.75
Shandong Xingyuan International Trading Co., Ltd.*	Shangdong Xingda Tyre Co., Ltd	24.75
Shandong Xingyuan International Trading Co., Ltd.*	Xingyuan Tyre Group Co., Ltd	24.75
Techking Tires Limited (Techking Enterprise (H.K.) Co., Ltd.)*	Shandong Xingda Tyre Co. Ltd	24.75
Techking Tires Limited (Techking Enterprise (H.K.) Co., Ltd.)*	Shandong Xing International Trade Co. Ltd	24.75
Techking Tires Limited (Techking Enterprise (H.K.) Co., Ltd.)*	Shandong Xingyuan Rubber Co. Ltd	24.75
Triangle Tyre Co., Ltd.*	Triangle Tyre Co., Ltd	24.75
Wendeng Sanfeng Tyre Co., Ltd.*	Wendeng Sanfeng Tyre Co., Ltd	24.75
Zhaoyuan Leo Rubber Co., Ltd.*	Zhaoyuan Leo Rubber Co., Ltd	24.75
PRC-Entity		210.48

Disclosure

We will disclose the calculations performed to parties in this proceeding within five days of the date of publication of this notice 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 subject merchandise, 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 NV exceeds U.S. price, as indicated above. The suspension of liquidation 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 OTR tires, 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 on which the final verification report is issued in this proceeding and rebuttal briefs, limited to issues raised in case briefs may be submitted no later than five days after the deadline date for case briefs. *See* 19 CFR 351.309. A table of contents, 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. 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.[92] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. 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. See 19 CFR 351.310. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

We will make our final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.

[92] *See* 19 CFR 351.310(c).

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: February 5, 2008.

Ronald K. Lorentzen,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 08–672 Filed 2–19–08; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–507–502]

Certain In–Shell Raw Pistachios from Iran: Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: In response to a request from Cal Pure Pistachios, Inc. (Cal Pure), a domestic interested party, the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on certain in–shell raw pistachios (raw pistachios) from Iran. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 72 FR 48613 (August 24, 2007). This review covers the period July 1, 2006, through June 30, 2007. We are now rescinding this review due to Cal Pure's withdrawal of its request for review.

EFFECTIVE DATE: February 20, 2008.

FOR FURTHER INFORMATION CONTACT: Dena Crossland or John Drury, 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) 482–3362 or (202) 482–0195, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 17, 1986, the Department published in the **Federal Register** a notice of the antidumping duty order on raw pistachios from Iran. *See Antidumping Duty Order; Certain In–Shell Pistachios from Iran*, 51 FR 25922 (July 17, 1986). On July 3, 2007, the Department published the opportunity to request an administrative review of the antidumping duty order on raw pistachios from Iran for the period July 1, 2006, through June 30, 2007. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 72 FR 36420 (July 3, 2007).

In accordance with 19 CFR 351.213(b)(1), on July 24, 2007, Cal Pure, a domestic interested party, requested an administrative review of the sales of subject merchandise from Iran for the following companies: Ahmadi's Agricultural Production, Processing and Trade Complex (Ahmadi); Maghsoudi Farms (Maghsoudi); Rafsanjan Pistachio Producers Cooperative (RPPC); Razi Domghan Agricultural & Animal Husbandry Co. (Razi); and Tehran Negah Nima Trading Company Inc. (Nima). On August 24, 2007, the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review covering the period July 1, 2006, through June 30, 2007. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 72 FR 48613 (August 24, 2007).

On September 10, 2007, the Department issued its antidumping duty questionnaire to Ahmadi, Maghsoudi, Nima, Razi, and RPPC. On September 26, 2007, a former representative on behalf of RPPC notified the Department that it was no longer representing RPPC and provided a new mailing address for RPPC. On September 28, 2007, the Department sent RPPC the original questionnaire to the new mailing address in Iran. *See* Memorandum to the File from Judy Lao, Analyst, through Angelica Mendoza, Program Manager, dated October 3, 2007. On October 4, 2007, the representative for Maghsoudi, Nima, and Razi informed the Department that it would not be filing responses to the Department's questionnaire as Maghsoudi, Nima, and Razi did not export or ship subject merchandise during the period of review (POR). *See* Memorandum to the File from Judy Lao, Analyst, through Angelica Mendoza, Program Manager, dated October 12, 2007. On October 5, 2007, the Department received notice that the RPPC did not receive the antidumping questionnaire, and re–sent the original questionnaire, and changed the due dates for RPPC's responses, after revising the shipping information. *See* Memorandum to the File from Judy Lao, Analyst, through Angelica Mendoza, Program Manager, dated October 9, 2007. On October 10, 2007, Ahmadi's representative informed the Department that it would not be filing responses to the Department's questionnaire as it did not export or ship subject merchandise during the POR. *See* Letter from Ahmadi's Agricultural Production, Processing and Trade Complex, dated

October 10, 2007. On November 2, 2007, the Department sent a letter to RPPC because it had not responded to section A of the Department's antidumping questionnaire by the October 25, 2007, deadline. In the November, 2, 2007, letter, the Department instructed RPPC to notify the Department if it did not have any U.S. sales or shipments during the POR, or to submit its section A questionnaire response by November 9, 2007. The Department did not receive a reply from RPPC.

On November 30, 2007, the Department issued a ''No Shipment Inquiry'' to U.S. Customs and Border Protection (CBP) to confirm that there were no shipments or entries of raw pistachios from Iran produced and/or exported by Ahmadi, Maghsoudi, Nima, or Razi during the POR of the instant review. CBP only responds to the Department's inquiry when CBP finds that there have been shipments. CBP did not respond to the Department's inquiry, and no party submitted comments. *See* Memorandum to the File Regarding Ahmadi's Agricultural Production, Processing and Trade Complex; Maghsoudi Farms; Razi Domghan Agricultural and Animal Husbandry Co.; and Tehran Negah Nima Trading Company Inc. No Shipments of Certain In–Shell Raw Pistachios from Iran Pursuant to U.S. Customs and Border Protection Inquiry, from Dena Crossland, Analyst, through Angelica L. Mendoza, Program Manager, dated January 2, 2008.

On January 14, 2008, Cal Pure withdrew its request for review with respect to Ahmadi, Maghsoudi, Nima, Razi, and RPPC.

Rescission of the Administrative Review

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review under this section, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. The Secretary may extend this time limit if the Secretary decides that it is reasonable to do so. *See* 19 CFR 351.213(d)(1). Although Cal Pure's withdrew its request for review after 90 days of the date of publication of the notice of initiation, the Department determines it is reasonable under these circumstances to accept the request. Specifically, no party has objected to Cal Pures' late withdrawal and the Department has not expended significant resources to date in conducting this review.

Therefore, in response to Cal Pure's withdrawal of its request for administrative reviews pursuant to 19 CFR 351.213(d)(1), the Department hereby rescinds the administrative review of the antidumping duty order on raw pistachios from Iran for the period June 1, 2006, through July 31, 2007. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of this rescission of administrative review.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003 (68 FR 23954). *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003). This clarification will apply to entries of subject merchandise during the POR produced by any of the companies for which we are rescinding this review, and for which each no–shipment respondent did not know its merchandise would be exported by another company to the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all–others rate if there is no rate for the intermediate company(ies) involved in the transaction.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or 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 is published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: February 11, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E8–3145 Filed 2–19–08; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Scope Rulings

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 20, 2008.

SUMMARY: The Department of Commerce (''Department'') hereby publishes a list of scope rulings completed between October 1, 2007, and December 31, 2007. In conjunction with this list, the Department is also publishing a list of requests for scope rulings and anticircumvention determinations pending as of December 31, 2007. We intend to publish future lists after the close of the next calendar quarter.

FOR FURTHER INFORMATION CONTACT: Juanita H. Chen, AD/CVD Operations, SEC Office, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: 202–482–1904.

SUPPLEMENTARY INFORMATION:

Background

The Department's regulations provide that the Secretary will publish in the **Federal Register** a list of scope rulings on a quarterly basis. *See* 19 CFR 351.225(o). Our most recent notification of scope rulings was published on November 5, 2007. *See Notice of Scope Rulings,* 72 FR 62438 (November 5, 2007). This current notice covers all scope rulings and anticircumvention determinations completed by Import Administration between October 1, 2007, and December 31, 2007, inclusive, and it also lists any scope or anticircumvention inquiries pending as of December 31, 2007. As described below, subsequent lists will follow after the close of each calendar quarter.

Scope Rulings Completed Between October 1, 2007, and December 31, 2007:

People's Republic of China

A–570–504: Petroleum Wax Candles from the People's Republic of China

Requestor: Lamplight Farms, Inc.; its Tiki Mosquito Candle is not included within the scope of the antidumping duty order; December 13, 2007.

A–570–504: Petroleum Wax Candles from the People's Republic of China

Requestor: Signature Brands, Inc.; Jumbo Pumpkin Candles (item #00337WM and 0033712) are included within the scope of the antidumping duty order; December 17, 2007.

A–570–803: Heavy Forged Hand Tools, With or Without Handles from the People's Republic of China

Requestor: Fiskars Brands, Inc.; the stamped machete, gator machete, and brush axe are not included within the scope of the antidumping duty order; October 29, 2007.

A–570–848: Freshwater Crawfish Tailmeat from the People's Republic of China

Requestor: Maritime Products

International; breaded crawfish tailmeat is included within the scope of the antidumping duty order; November 9, 2007.

A–570–868: Folding Metal Tables and Chairs from the People's Republic of China

Requestor: International E–Z Up, Inc.; its Instant Work Bench is not within the scope of the antidumping duty order; October 4, 2007.

Multiple Countries

A–533–809: Certain Forged Stainless Steel Flanges from India; A–583–821: Certain Forged Stainless Steel Flanges from Taiwan

Requestor: Lokring Technology Corporation; certain assemblies comprising stainless steel flanges from India or Taiwan welded to stainless steel ''half-bodies'' with swage rings, and completed in Canada, are not within the scope of the order; October 4, 2007.

A–549–821: Polyethylene Retail Carrier Bags from Thailand; A–557–813: Polyethylene Retail Carrier Bags from Malaysia; A–570–886: Polyethylene Retail Carrier Bags from the People's Republic of China

Requestor: Asia Dynamics, Inc.; certain hospital patient belongings bags (model nos. 304211, 304311, 304411, 304611, 304711, 304811, 40219, 40229) are not within the scope of the antidumping duty order; November 15, 2007.

A–549–821: Polyethylene Retail Carrier Bags from Thailand; A–557–813: Polyethylene Retail Carrier Bags from Malaysia; A–570–886: Polyethylene Retail Carrier Bags from the People's Republic of China

Requestor: Medline Industries, Inc.; certain hospital patient belongings bags (drawstring bags model nos. NON026310, NON026330, NON026370; rigid handle bags model nos. NON026320, NON026320GR, NON026340; cut out handle bags model no. NON026350) are not within the scope of the antidumping duty order; November 15, 2007.

Anticircumvention Determinations Completed Between October 1, 2007, and December 31, 2007: None.

Scope Inquiries Terminated Between October 1, 2007, and December 31, 2007: None.

Anticircumvention Inquiries Terminated Between October 1, 2007, and December 31, 2007: None.

Scope Inquiries Pending as of December 31, 2007:

Italy

A–475–703: Granular Polytetrafluoroethylene Resin from Italy

Requestor: Petitioner, E.I. DuPont de Nemours & Company; whether imports of Polymist[reg] feedstock produced by the respondent Solvay Solexis, Inc. and Solvay Solexis S.p.A. are within the scope of the antidumping duty order; requested August 18, 2006; initiated October 2, 2006; preliminary ruling July 2, 2007.

People's Republic of China

A–570–502: Iron Construction Castings from the People's Republic of China

Requestor: A.Y. McDonald Mfg. Co.; whether cast iron lids and bases independently sourced from the PRC for its ''Arch Pattern'' and ''Minneapolis Pattern'' curb boxes are included within the scope of the antidumping duty order; requested April 2, 2007.

A–570–827: Cased Pencils from the People's Republic of China

Requestor: Walgreen Co.; whether the ''Artskills™ Draw & Sketch Kit'' is included within the scope of the antidumping duty order; requested May 25, 2007.

A–570–827: Cased Pencils from the People's Republic of China

Requestor: Walgreen Co.; whether the ''Artskills™ Stencil Kit'' is included within the scope of the antidumping duty order; requested May 25, 2007.

A–570–827: Cased Pencils from the People's Republic of China

Requestor: The Smencil Company; whether its not yet scent applied newspaper pencils are included within the scope of the antidumping duty order; requested July 5, 2007.

A–570–864: Pure Magnesium in Granular Form from the People's Republic of China

Requestor: ESM Group Inc.; whether atomized ingots are included within the scope of the antidumping duty order; original scope ruling rescinded and vacated April 18, 2007 [1]; initiated April 18, 2007.

A–570–866: Folding Gift Boxes from the People's Republic of China

Requestor: Footstar; whether certain boxes for business cards and forms are included within the scope of the antidumping duty order; requested April 26, 2007.

A–570–866: Folding Gift Boxes from the People's Republic of China

Requestor: Hallmark Cards, Inc.; whether its ''FunZip'' gift presentation is included within the scope of the antidumping duty order; requested June 1, 2007.

A–570–875: Non-Malleable Cast Iron Pipe Fittings from the People's Republic of China

Requestor: Taco Inc.; whether black cast iron flange, green ductile iron flange and cast iron ''Twin Tee'' are included within the scope of the antidumping duty order; requested September 6, 2007.

A–570–882: Refined Brown Aluminum Oxide from the People's Republic of China

Requestor: 3M Company; whether certain semi-friable and heat-treated, specialty aluminum oxides are within the scope of the antidumping duty order; requested September 19, 2006; initiated January 17, 2007.

A–570–886: Polyethylene Retail Carrier Bags from the People's Republic of China

Requestor: Majestic International; whether certain polyethylene gift bags (UPC codes starting with 8–51603– and ending with: 00002–3, 00004–7, 00140–2, 00141–9, 00142–6, 00041–2, 00040–5, 00052–8, 00059–7, 00066–5, 00068–9, 00071–9, 00072–6, 00075–7, 00076–4, 00092–4, 00093–1, 00094–8, 00098–6, 00131–0, 00132–7, 00133–4, 00144–0, 00145–7, 00152–5, 00153–2, 00155–6, 00156–3, 00160–0, 00163–1, 00165–5, 00166–2, 00175–4, 00176–1, 00181–5, 00183–9, 00226–3, 00230–0, 00231–7, 00246–1, 00251–5, 00252–2, 00253–9, 00254–6, 00255–3, 00256–0, 00257–7, 00259–1, 00260–7, 00262–1, 00263–8, 00300–0, 00301–7, 00302–4, 00303–1, 00305–5, 00306–2, 00307–9, 00308–6, 00309–3, 00350–5, 00351–2, 00352–9, 00353–6, 00354–3, 00355–0, 00356–7, 00357–4, 00358–1) are included within the scope of the antidumping duty order; requested June 2, 2007.

A–570–886: Polyethylene Retail Carrier Bags from the People's Republic of China

Requestor: DMS Holdings, Inc.; whether certain MABIS Healthcare hospital bags (biohazard disposal bag nos. 75–860–010, 75–860–080, 75–864–080; isolation bag no. 75–850–000; patient set-up bag nos. 75–833–000, 75–842–000, 75–970–550, 75–973–550, 75–979–550; personal belongings bag nos. 75–010–850, 75–011–850, 75–013–850, 75–014–850, 75–019–850, 75–032–850, 75–033–850, 75–036–850, 75–037–850, 75–038–850, 75–046–850,

[1] *See Notice of Scope Rulings,* 72 FR 43245, 43246 (August 3, 2007).

75–047–850, 75–075–850, 75–105–850, 75–109–850, 75–110–850, 75–111–850, 75–117–850, 75–118–850, 75–120–850, 75–834–000, 75–838–000, 75–839–000, 75–844–000, 75–845–000, 75–847–000; kit packing bag nos.75–801–000, 75–802–000, 75–803–000, 75–804–000, 75–862–000, 75–863–000, 75–865–000) are included within the scope of the antidumping duty order; requested June 8, 2007.

A–570–886: Polyethylene Retail Carrier Bags from the People's Republic of China

Requestor: Medline Industries, Inc.; whether certain hospital patient belongings bags and surgical kit bags (drawstring bags model nos. DS500C, DS400C, DONDS600, 38667, 7510, 42818, 25117, 28614, 42817; rigid handle bag model no. 26900) are included within the scope of the antidumping duty order; requested June 15, 2007.

A–570–886: Polyethylene Retail Carrier Bags from the People's Republic of China

Requestor: Rayton Produce Packaging Inc.; whether its promotional bag (model #F–OPPAPEJZLG) is included within the scope of the antidumping duty order; requested November 20, 2007.

A–570–890: Wooden Bedroom Furniture from the People's Republic of China

Requestor: AP Industries; whether convertible cribs (model nos. 1000–0100; 1000–0125; 1000–0160; 1000–1195/2195; 1000–2145; and 1000–2165) are included within the scope of the antidumping duty order; requested June 26, 2007.

A–570–890: Wooden Bedroom Furniture from the People's Republic of China

Requestor: Dutailier Group, Inc.; whether its convertible cribs (infant crib to toddler bed; model numbers 1230C8, 3500C8, 5400C8, 5500C8, and 6200C8) are included within the scope of the antidumping duty order; requested September 21, 2007.

A–570–890: Wooden Bedroom Furniture from the People's Republic of China

Requestor: Armel Enterprises, Inc.; whether children's playroom and accent furniture is included within the scope of the antidumping duty order; requested September 24, 2007.

A–570–890: Wooden Bedroom Furniture from the People's Republic of China

Requestor: Shermag Inc.; whether the Three-in-One Crib (model #2056–48, 2110–49, and 2045–48) are included within the scope of the antidumping duty order; requested November 2, 2007.

A–570–890: Wooden Bedroom Furniture from the People's Republic of China

Requestor: Target Corporation; whether the Shabby Chic secretary desk and mirror are included within the scope of the antidumping duty order; requested November 30, 2007.

A–570–891: Hand Trucks from the People's Republic of China

Requestor: Northern Tool & Equipment Co.; whether a high-axle torch cart (item #164771) is included within the scope of the antidumping duty order; requested March 27, 2007.

A–570–891: Hand Trucks from the People's Republic of China

Requestor: WelCom Products, Inc.; whether its ''miniature'' Magna Cart is included within the scope of the antidumping duty order; requested August 20, 2007.

A–570–891: Hand Trucks from the People's Republic of China

Requestor: Eastman Outdoors, Inc.; whether its deer cart (model #9930) is included within the scope of the antidumping duty order; requested October 17, 2007.

A–570–891: Hand Trucks from the People's Republic of China

Requestor: WelCom Products, Inc.; whether its MCX Magna Cart is included within the scope of the antidumping duty order; requested November 19, 2007.

A–570–898: Chlorinated Isocyanurates from the People's Republic of China

Requestor: BioLab, Inc.; whether chlorinated isocyanurates originating in the People's Republic of China, that are packaged, tableted, blended with additives, or otherwise further processed in Canada by Capo Industries, Ltd., before entering the U.S., are included within the scope of the antidumping duty order; requested November 22, 2006; preliminary ruling October 9, 2007.

A–570–898: Chlorinated Isocyanurates from the People's Republic of China

Requestor: BioLab, Inc.; whether chlorinated isocyanurates originating in the People's Republic of China, that are packaged, tableted, blended with additives, or otherwise further processed in Vietnam before entering the U.S., are included within the scope of the antidumping duty order; requested August 15, 2007.

A–570–899: Artist Canvas from the People's Republic of China

Requestor: Tara Materials, Inc.; whether artist canvas purchased in the U.S. that has been woven, primed with gesso, and cut to size in the U.S. and shipped to the PRC for assembling (i.e., wrapping and stapling to the wooden frame) and returned to the U.S. are included within the scope of the antidumping duty order; requested July 23, 2007.

A–570–901: Lined Paper Products from the People's Republic of China

Requestor: Lakeshore Learning Materials; whether certain printed educational materials, product numbers RR973 and RR974 (Reader's Book Log); GG185 and GG186 (Reader's Response Notebook); GG181 and GG182 (The Writer's Notebook); RR673 and RR674 (My Word Journal); AA185 and AA186 (Mi Diario de Palabras); RR630 and RR631 (Draw & Write Journal); AA786 and AA787 (My First Draw & Write Journal); AA181 and AA182 (My Picture Word Journal); GG324 and GG325 (Writing Prompts Journal); EE441 and EE442 (Daily Math Practice Journal Grades 1–3); EE443 and EE444 (Daily Math Practice Journal Grades 4–6); EE651 and EE652 (Daily Language Practice, Grades 1–3); EE653 and EE654 (Daily Language Practice Journal, Grades 4–6), are included within the scope of the antidumping duty order; requested December 7, 2006; initiated May 7, 2007.

Multiple Countries

A–423–808 and C–423–809: Stainless Steel Plate in Coils from Belgium; A–475–822: Stainless Steel Plate in Coils from Italy; A–580–831: Stainless Steel Plate in Coils from South Korea; A–583–830: Stainless Steel Plate in Coils from Taiwan; A–791–805 and C–791–806: Stainless Steel Plate in Coils from South Africa

Requestor: Ugine & ALZ Belgium N.V.; whether stainless steel products with an actual thickness of less than 4.75 mm, regardless of nominal thickness, are within the scope of the antidumping and countervailing duty orders; requested June 8, 2007; initiated July 23, 2007.

Anticircumvention Rulings Pending as of December 31, 2007:

People's Republic of China

A–570–001: Potassium Permanganate from the People's Republic of China

Requestor: Specialty Products International, Inc.; whether sodium permanganate is later-developed merchandise that is circumventing the antidumping duty order; requested October 10, 2006.

A–570–868: Folding Metal Tables and Chairs from the People's Republic of China

Requestor: Meco Corporation; whether the common leg table (a folding metal table affixed with cross bars that enable the legs to fold in pairs) produced in the PRC is a minor alteration that circumvents the antidumping duty order; requested October 31, 2005; initiated June 1, 2006.

A–570–894: Certain Tissue Paper Products from the People's Republic of China

Requestor: Seaman Paper Company; whether imports of tissue paper from Vietnam made out of jumbo rolls of tissue paper from the PRC are circumventing the antidumping duty order; requested July 19, 2006; initiated September 5, 2006.

Interested parties are invited to comment on the completeness of this list of pending scope and anticircumvention inquiries. Any comments should be submitted to the Deputy Assistant Secretary for AD/CVD Operations, Import Administration, International Trade Administration, 14th Street and Constitution Avenue, NW., Room 1870, Washington, DC 20230.

This notice is published in accordance with 19 CFR 351.225(o).

Dated: February 11, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E8–3147 Filed 2–19–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 080211154–8161–01]

RIN 0648–XF53

2008 Sea Scallop Research Set-Aside Program

AGENCY: Northeast Fisheries Science Center Program Office (NEFSC), National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of funding availability.

SUMMARY: NMFS requests scallop research proposals to utilize total allowable catch (TAC) and Days-at-Sea (DAS) that have been set aside by the New England Fishery Management Council (Council) to fund scallop research endeavors under the 2008 Atlantic Sea Scallop Research Set-Aside Program (Scallop RSA Program). No Federal funds are provided for research under this notification. Rather, the Scallop RSA Program funds scallop research and compensates participating vessels through the sale of scallops harvested under the research set-aside quota. Priority will be given to research proposals that address the following research priorities as identified by NMFS and the Council: Intensive industry-based access area surveys; Other surveys, including areas not surveyed by the annual NMFS survey; Scallop biology; Identification and evaluation of methods to reduce groundfish bycatch; Identification and evaluation of methods to reduce habitat impacts; Habitat characterization research; Sea turtle/scallop fishery interaction research; Scallop stock assessment and population dynamics research; Area management research; and Research that will facilitate the transition of the NFMS Northeast scallop dredge survey.

DATES: Full proposals must be received by 5 p.m., eastern standard time, on March 21, 2008.

ADDRESSES: Application information is available at *http://www.grants.gov*. Electronic copies of the Standard Forms for submission of research proposals may be found on the Internet in a PDF (Portable Document Format) version at *http://www.ago.noaa.gov/grants/appkit.shtml*. Delays may be experienced when registering with Grants On-line near the end of a solicitation period. Therefore, NOAA strongly recommends that you do not wait until the application deadline date to begin the application process through Grants.gov. Applicants without Internet access may contact Cheryl Corbett, NMFS, Northeast Fisheries Science Center, 166 Water Street, Woods Hole, MA 02543, by phone 508–495–2070, fax 508–495–2004, or email *cheryl.corbett@noaa.gov*. To apply for this NOAA Federal funding opportunity, please go to *http://www.grants.gov*, and use the following funding opportunity # NMFS-NEFSC–2008–2001277.

FOR FURTHER INFORMATION CONTACT: Information may be obtained from Deirdre Boelke, New England Fishery Management Council, by phone (978) 465–0492, fax (978) 465–3116, or e-mail *dboelke@nefmc.org*, from Cheryl Corbett, NMFS, Northeast Fisheries Science Center, by phone 508–495–2070, fax 508–495–2004, or email *cheryl.corbett@noaa.gov*, or from Ryan Silva, NMFS, Northeast Regional Office, by phone (978) 281–9326, fax (978) 281–9135, or email *ryan.silva@noaa.gov*.

SUPPLEMENTARY INFORMATION: Framework 19 to the Fishery Management Plan (FMP), establishes scallop fishery management measures for the 2008 and 2009 fishing years. As part of the management measures, Framework 19 allows NMFS to utilize total allowable catch (TAC) and Days-at-Sea (DAS) to fund scallop research endeavors under the 2008 Atlantic Sea Scallop Research Set-Aside Program (Scallop RSA Program). No Federal funds are provided for research under this notification. Rather, the Scallop RSA Program funds scallop research and compensates participating vessels through the sale of scallops harvested under the research set-aside quota. Priority will be given to research proposals that address the following research priorities as identified by NMFS and the Council: (1) Intensive industry-based access area surveys; (2) Other surveys, including areas not surveyed by the annual NMFS survey; (3) Scallop biology; (4) Identification and evaluation of methods to reduce groundfish bycatch; (5) Identification and evaluation of methods to reduce habitat impacts; (6) Habitat characterization research; (7) Sea turtle/scallop fishery interaction research; (8) Scallop stock assessment and population dynamics research; (9) Area management research; and (10) Research that will facilitate the transition of the NFMS Northeast scallop dredge survey.

Framework 19 landings per unit effort and economic impact analyses were used to establish a value on the proposed DAS and TAC set-asides. Framework 19 projects the average price per pound of scallops in the 2008 fishing year to be between $7.70 and $8.47. The average daily open area catch rate for the 2008 scallop fishing year (March 1, 2008 – February 28, 2009) is projected to be 1,176 lb (533 kg) per DAS. Using the more conservative price estimate of $7.70, the DAS and TAC set aside values as currently proposed by Framework 19 are estimated as follows: (1) The DAS set-aside for the open fishing areas is 235 DAS with a value of $2,127,972; (2) the research TAC set-aside for the Nantucket Lightship Closed Area (NLCA) would be 110,000 lb (50 metric tons (mt)), with a value of $847,000; and (3) the research TAC set-aside from the Elephant Trunk Scallop Access Area (ETAA) would be 440,000 lb (200 mt), with a value of $3,388,000. Thus, for fishing year 2008, the total value of the set-asides available for scallop-related research is approximately $6,362,972 (33 percent

from the open area DAS set-aside, 13 percent from the NLCA, 53 percent from the ETAA). Researchers must specify the amount of set-aside (TAC or DAS, as appropriate) sought from each area.

ELECTRONIC ACCESS: The full text of the full funding opportunity announcement for this program can be accessed via the Grants.gov web site at *http://www.grants.gov*. The announcement will also be available by contacting the program officials identified under **FOR FURTHER INFORMATION CONTACT**. Applicants must comply with all requirements contained in the full funding opportunity announcement.

STATUTORY AUTHORITY: Statutory authority for this program is provided under sections 303(b)(11), 402(e), and 404(c) of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1853(b)(11), 16 U.S.C. 1881a(e), and 16 U.S.C. 1881(c), respectively. Statutory authority for entering into cooperative agreements and other financial agreements with nonprofit organizations is found at 15 U.S.C. 1540. The ability to set aside scallop TAC and DAS is authorized through the scallop FMP.

CFDA: 11.454, Unallied Management Projects

FUNDING AVAILABILITY: No Federal funds are provided for sea scallop research under this notice. Funds are generated through the sale of set-aside scallops. The Federal government will issue Letters of Authorization (LOAs) that provide special fishing privileges in response to sea scallop research proposals selected to participate in the 2008 Scallop RSA Program. Funds generated from RSA landings shall be used to cover the cost of the research activities, including vessel costs, and to compensate vessels for expenses incurred during the collection of set-aside scallops. For example, these funds could be used to pay for gear modifications, monitoring equipment, additional provisions (e.g., fuel, ice, food for scientists) or the salaries of research personnel. The Federal Government is not liable for any costs incurred by the researcher or vessel owner. Any additional funds generated through the sale of set-aside scallops above the cost of the research activities shall be retained by the vessel owner as compensation for the use of his/her vessel.

ELIGIBILITY: 1. Eligible applicants include, but are not limited to, institutions of higher education, hospitals, other nonprofits, commercial organizations, individuals, state, local, and Native American tribal governments. Federal agencies and institutions are not eligible to receive Federal assistance under this notice. Additionally, employees of any Federal agency or Regional Fishery Management Council (Council) are ineligible to submit an application under this program. However, Council members who are not Federal employees may submit an application. 2. DOC/NOAA supports cultural and gender diversity and encourages women and minority individuals and groups to submit applications to the RSA program. In addition, DOC/NOAA is strongly committed to broadening the participation of historically black colleges and universities, Hispanic serving institutions, tribal colleges and universities, and institutions that work in underserved areas. DOC/NOAA encourages proposals involving any of the above institutions. 3. DOC/NOAA encourages applications from members of the fishing community and applications that involve fishing community cooperation and participation.

COST SHARING REQUIREMENTS: None required.

EVALUATION AND SELECTION PROCEDURES: The general evaluation criteria and selection factors that apply to full applications to this funding opportunity are summarized below. The evaluation criteria for full applications will have different weights and details. Further information about the evaluation criteria and selection factors can be found in the full funding opportunity announcement.

EVALUATION CRITERIA FOR PROJECTS: The review panel convened by NMFS to evaluate proposals submitted in response to this request for proposals (see the Review and Selection Process section of this document), will evaluate proposals by assigning scores up to the maximum indicated for each of the following criteria:

1. *Importance and/or relevance and applicability of the proposed project:* This criterion ascertains whether there is intrinsic value in the proposed work and/or relevance to NOAA, Federal, regional, state, or local activities. For the 2008 Scallop RSA Program, provide a clear definition of the problem, need, issue, or hypothesis to be addressed. The proposal should describe its relevance to RSA program priorities and detail how the data gathered from the research will be used to enhance the understanding of the fishery resource or contribute to the body of information on which management decisions are made. (25 points)

2. *Technical/scientific merit:* This criterion assesses whether the approach is technically sound and/or innovative, if the methods are appropriate, and whether there are clear project goals and objectives. For the 2008 RSA Program, proposals should provide a clear definition of the approach to be used, including descriptions of field work, theoretical studies, and laboratory analysis to support the proposed research. (25 points)

3. *Overall qualifications of the project:* This criterion assesses whether the applicant and team members possess the necessary education, experience, training, facilities, and administrative resources to accomplish the project. For the 2008 RSA Program, proposals should provide adequate justification as to how the project is likely to achieve its stated objectives. Projects should demonstrate support, cooperation, and/or collaboration with the fishing industry. (15 points)

4. *Project costs:* This criterion evaluates the budget to determine if it is realistic and commensurate with the project needs and time frame. For the 2008 RSA program, cost-effectiveness of the project will be considered. (25 points)

5. *Outreach and education:* This criterion assesses whether the project involves a focused and effective education and outreach strategy regarding NOAA's mission to protect the Nations natural resources. For the 2008 RSA Program, proposals should provide identification of anticipated benefits, potential users, likelihood of success, and methods of disseminating results. (10 points)

REVIEW AND SELECTION PROCESS: At the request of NOAA, applications may be reviewed and evaluated by the Council before they are submitted to NOAA, or, if not first reviewed by the Council, reviewed by the Technical Review Team convened by NOAA, which consist of NOAA Scientist and related Industry experts.

Both the Council review and the NOAA review are included to allow the Council to retain its responsibility to consider research in fishery management plans and to allow NOAA to conduct the reviews if the overall Council process prohibits their review in a timely manner. If the Council is requested to review the proposals, the proposals will be reviewed in a public meeting process by representatives of the Council, based on the criteria described in the Evaluation Criteria section of this document. The Council's representatives will then make recommendations to the Council. The Council will consider recommendations of its representatives; the criteria described in the Evaluation Criteria section of this document, and may also

consider the program policy factors listed below. The Council will then make its recommendations to the Regional Administrator through a formal vote or by consensus recommendations, as determined appropriate by the Council. Recommendations from the Council will be given to the Regional Administrator in rank order based on average scores of the projects, taking into consideration the numerical scores based on the criteria described in the Evaluation Criteria section of this document, and consideration of program policy factors listed below. If the Council does not participate in the evaluation of the proposals, NOAA will solicit written technical evaluations from a Technical Review Team, which consists of three or more NOAA Scientist and related Industry experts to determine the technical merit of the proposal and to provide a rank score of the project based on the criteria described in the Evaluation Criteria section of this document. Following completion of the technical evaluation, NOAA will convene a Management Review Panel, containing members from the Council's Scallop or Research Steering Committees and technical experts, to review and individually critique the scored proposals to enhance NOAA's understanding of the proposals. Initial successful applicants may be required, in consultation with NMFS, to further refine/modify the study methodology as a condition of project approval. No consensus recommendations will be made by the Committee members, technical experts, or by the review panel.

SELECTION FACTORS FOR PROJECTS: Upon implementation of the merit review, the proposal will be presented in rank order, to the Selecting Official for final funding recommendations. A program officer may first make recommendations to the Selecting Official by applying the selection factors below. The Selecting Official shall award in the rank order unless the proposal is justified to be selected out of rank order based upon one or more of the following factors: 1. Availability of funds. 2. Balance/distribution of funds: a. geographically, b. by type of institutions, c. by type of patterns, d. by research areas, and e. by project types. 3. Whether this project duplicates other projects funded or considered for funding by NOAA or other Federal agencies. 4. Program priorities and policy factors. 5. Applicants prior award performance. 6. partnerships and/or participation of targeted groups. 7. Adequacy of information necessary to conduct a NEPA analysis and determination. Key program policy concerns are: (1) the time of year the research activities are to be conducted; (2) the ability of the proposal to meet the experimental fishery requirements discussed under the Permits and Approvals section of this document; (3) redundancy of research projects; and (4) logistical concerns. Therefore, the highest scoring projects may not necessarily be selected for an award. Subsequent approval by the NOAA Grants Officer will allow NMFS, as applicable, to exempt selected vessel(s) from regulations of the Atlantic Sea Scallop FMP. For example, NOAA may authorize selected vessel(s) to exceed scallop possession limits, take additional trips into Access Area(s), or take trips that are exempt from DAS regulations to compensate the vessel for incurred research expenses. All sea scallop research must be conducted in accordance with provisions approved by NOAA and provided in an LOA or Exempted Fishing Permit (EFP) issued by NMFS. Based on the final funding recommendations of the Selecting Official, TAC and DAS set-asides will be awarded according to rank. If a requested set-aside has been fully utilized by a higher ranked proposal, TAC and/or DAS will be awarded from a different set-aside. Once all the TAC and/or DAS set-asides have been awarded or all qualified proposals have been funded, whichever comes first, the selection process will end. For proposals that request exemptions from existing regulations (e.g., possession limits, closed areas, etc.), the impacts of the proposed exemptions must be analyzed. Any applicants who request regulatory exemptions that extend beyond the DAS or TAC set-aside proposed in Framework 19 will be required to adhere to the regulations governing the issuance of an EFP by NMFS. As appropriate, NMFS will consult with the Councils and successful applicants to secure the information required for granting an exemption if issuance of an EFP is necessary for the research to be conducted. No usage of RSA TAC or DAS will be allowed until NMFS notifies the applicant that the applicant's EFP request is approved. Unsuccessful applications will be returned to the submitter. Successful applications will be incorporated into the award document.

INTERGOVERNMENTAL REVIEW: Applicants will need to determine if their State participates in the intergovernmental review process. This information can be found at the following website: *www.whitehouse.gov/omb/grants/spoc.html*. This information will assist applicants in providing either a Yes or No response to Item 16 of the Application Form, SF–424, entitled ''Application for Federal Assistance.''

LIMITATION OF LIABILITY: In no event will NOAA or the Department of Commerce be responsible for proposal preparation costs if these programs fail to receive funding or are cancelled because of other agency priorities. Publication of this announcement does not oblige NOAA to award any specific project or to obligate any available funds.

NATIONAL ENVIRONMENTAL POLICY ACT (NEPA): NOAA must analyze the potential environmental impacts, as required by the National Environmental Policy Act (NEPA), for applicant projects or proposals which are seeking NOAA federal funding opportunities. Detailed information on NOAA compliance with NEPA can be found at the following NOAA NEPA website: *http://www.nepa.noaa.gov*, including our NOAA Administrative Order 216–6 for NEPA, *http://www.nepa.noaa.gov/NAO216_6_TOC.pdf*, And the Council on Environmental Quality implementation regulations, *http://ceq.eh.doe.gov/nepa/regs/ceq/toc_ceq.htm*. Consequently, as part of an applicant's package, and under their description of their program activities, applicants are required to provide detailed information on the activities to be conducted, locations, sites, species and habitat to be affected, possible construction activities, and any environmental concerns that may exist (e.g., the use and disposal of hazardous or toxic chemicals, introduction of non-indigenous species, impacts to endangered and threatened species, aquaculture projects, and impacts to coral reef systems). In addition to providing specific information that will serve as the basis for any required impact analyses, applicants may also be requested to assist NOAA in drafting of an environmental assessment, if NOAA determines an assessment is required. Applicants will also be required to cooperate with NOAA in identifying feasible measures to reduce or avoid any identified adverse environmental impacts of their proposal. The failure to do so shall be grounds for not selecting an application. In some cases if additional information is required after an application is selected, funds can be withheld by the Grants Officer under a special award condition requiring the recipient to submit additional environmental compliance information

sufficient to enable NOAA to make an assessment on any impacts that a project may have on the environment.

THE DEPARTMENT OF COMMERCE PRE-AWARD NOTIFICATION REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS: The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of December 30, 2004 (69 FR 78389), are applicable to this solicitation.

PAPERWORK REDUCTION ACT: This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Standard Forms 424, 424A, 424B, and SF–LLL and CD–346 has been approved by the Office of Management and Budget (OMB) under the respective control numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046, and 0605–0001.

Notwithstanding any other provision of law, no person is required to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

EXECUTIVE ORDER 12866: This notice has been determined to be not significant for purposes of Executive Order 12866.

EXECUTIVE ORDER 13132 (FEDERALISM): It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

ADMINISTRATIVE PROCEDURE ACT/REGULATORY FLEXIBILITY ACT: Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act or any other law for rules concerning public property, loans, grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements for the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Dated: February 12, 2008.

Samuel D. Rauch III

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

[FR Doc. E8–3142 Filed 2–19–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for the Florida Keys National Marine Sanctuary Advisory Council

AGENCY: Office of National Marine Sanctuaries (ONMS) National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The Florida Keys National Marine Sanctuary (FKNMS) is seeking applications for the following vacant seats on its Sanctuary Advisory Council (council): Citizen at Large—Upper Keys (alternate), Conservation and Environment [2 of 2] (member), Fishing—Charter Sports Fishing (alternate), and South Florida Ecosystem Restoration (member).

Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; residency in the Sanctuary area; and philosophy regarding the protection and management of marine resources. Applicants who are chosen for seats normally serve three-year terms, pursuant to the Council's charter.

DATES: Applications are due by March 14, 2008.

ADDRESSES: Application packages may be obtained from the Sanctuary Advisory Council and Volunteer Coordinator at *Lilli.Ferguson@noaa.gov,* from the Web site at *http://www.floridakeys.noaa.gov,* by telephone at (305) 292–0311 x245 or in writing at Florida Keys National Marine Sanctuary, 33 East Quay Rd., Key West, FL 33040. Completed applications should be sent to the same address listed above.

FOR FURTHER INFORMATION CONTACT: Lilli Ferguson at the above address, e-mail or telephone number.

SUPPLEMENTARY INFORMATION: Information concerning the council, including past meeting minutes and member contact information can be found at the sanctuary Web site.

Authority: 16 U.S.C. Sections 1431, *et seq.* (Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: February 11, 2008.

Daniel J. Basta,

Director, Office of National Marine Sanctuaries, National Oceanic and Atmospheric Administration.

[FR Doc. 08–747 Filed 2–19–08; 8:45 am]

BILLING CODE 3510–NK–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE36

Taking of Marine Incidental to Specified Activities; Taking Marine Mammals Incidental to Power Plant Operations in Central and Southern California

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

ACTION: Notice; receipt of applications for letters of authorization; request for comments and information.

SUMMARY: NMFS has received applications for take authorizations from 13 power generating stations located on the coast of central and southern California to take small numbers of marine mammals by Level A harassment and mortalities incidental to routine power plant operations for the duration of five years from the date when the authorizations are issued. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is announcing our receipt of these requests for the development and implementation of regulations governing the incidental taking of marine mammals and inviting information, suggestions, and comments on these applications.

DATES: Comments and information must be received no later than March 21, 2008.

ADDRESSES: Comments on the applications should be addressed to 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, or by telephoning one of the contacts listed here (see **FOR FURTHER INFORMATION CONTACT**). The mailbox address for providing email comments is *PR1.0648–EX36@noaa.gov*. Comments sent via email, including all attachments, must not exceed a 10–megabyte file size. Copies of the applications and other supporting material may be obtained by writing to

this address or by telephoning the first contact person listed here and is also available at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*.

FOR FURTHER INFORMATION CONTACT: Daniel Lawson, 562–980–3209, or Lindsey Waller, 562–980–3230, NMFS Southwest Regional Office.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specific activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations issued.

Permission may be granted for periods of 5 years or less if the Secretary finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for certain subsistence uses, and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring, and reporting of such taking 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.

Except for certain categories of activities not pertinent here, the MMPA defines ''harassment'' in 16 U.S.C. 1362(18)(A) 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].

Summary of Request

Incidental live and lethal takings of marine mammals, including California sea lions (*Zalophus californianus*), harbor seals (*Phoca vitulina*), and northern elephant seals (*Mirounga angustirostris*) have occurred or have a reasonable chance to occur, and are expected to continue to occur as a result of the operation of circulating water systems (CWS) by the electrical power generation plants located on the coast of central and southern California described in the incidental take exemption permit applications. These CWS are an integral part of these power stations that provide continuous cooling water necessary for power generation and safety of the facility. The typical location of entrainment occurs as water is taken into the plant via submerged structures or canals. Intake velocities may be strong enough to pull live animals into the plant, particularly if they are actively seeking prey in the vicinity of intake structures. Confinement within intake plumbing could lead to confusion and panic, especially for young, immature animals. If the animal is unable to escape, it could (1) drown or become fatally injured in transit between intake and large sedimentation basins within the plants known as forebays, (2) survive the transit and succumb in the forebay due to exhaustion, illness, or disease, or (3) survive the transit and be rescued by plant personnel using cages specially designed for such an activity. It is also likely that previously dead animals may end up entrained as well.

The following is a list and brief description of the history and basic operational design of the 13 power generation stations applying for a incidental take authorization.

Redondo Beach Generating Station (RBGS)

RBGS is a 1,310–megawatt (MW) facility owned by the AES Corporation (1998) and operated by the Southern California Edison Company. The Redondo Beach plant is located on the southern California coast in the city of Redondo Beach and consists of eight fossil-fueled steam-electric generating units. There are three intake structures which provide cooling water to the eight units. In 1987, four of the units and one of the intake structures were taken offline. The two remaining intakes supply Units 5 and 6 and Units 7 and 8, respectively, and draw in approximately 176,000 468,000 gallons of sea water per minute (gpm).

Based on previous take information between 1991 and 2006, it is estimated that on average, approximately one harbor seal and less than one California sea lion could be taken lethally, and one seal and less than one sea lion could be taken alive (i.e., Level A harassment) annually.

Huntington Beach Generating Station (HBGS)

HBGS is a nominal 900–MW facility owned by the AES Corporation (1998). The Huntington Beach plant is located on the southern California coast in the city of Huntington Beach, and consists of four fossil-fueled steam-electric generating units. A single intake supplies cooling water to all units. The maximum design flow through the intake is 352,000 gpm.

Based on previous take information between 1991 and 2006, it is estimated that on average, less than one harbor seal and California sea lion could be taken lethally, and less than one seal and sea lion could be taken alive (i.e., Level A harassment) per year.

Moss Landing Power Plant (MLPP)

The MLPP is a 2,590–MW facility owned and operated by Dynegy Moss Landing LLC (2007) located on the eastern shoreline of Moss Landing Harbor in Monterey County, California, about 177 km south of San Francisco. Moss Landing Harbor is located approximately midway between the cities of Santa Cruz and Monterey and is open to Monterey Bay. The MLPP has two separate intake structures in Moss Landing Harbor for withdrawal of cooling water that is necessary to remove excess heat from the power generating process. The intake that services the newly operational Units 1 and 2 (2002) was modernized from its original configuration after the original Units 1 through 5 were retired (1995). A second intake structure services operating Units 6 and 7. The total flow of cooling water is approximately 850,000 gpm.

The California Stranding Network database indicates that there were 2 live and 2 dead California sea lions, and 2 dead harbor seals entrained at the facility between 1982 and 2006 due to operation of the cooling water system at MLPP. Beside this data, there is minimal risk of such takings occurring in the future.

Morro Bay Power Plant (MBPP)

The MBPP is a 1,030–MW facility owned and operated by Dynegy Morro Bay LLC (2007), and located within the city of Morro Bay, San Luis Obispo County, California, near the eastern shore of Morro Bay Harbor. The plant site is bordered on the west by Embarcadero Road and on the east by Highway 1. The CWS for the plant consists of an intake structure which draws water from Morro Bay which provides cooling water to the four existing units. MBPP is proposed for modernization involving the replacement of the existing four steam-electric generation units (Units 1 through 4) with two state-of-the-art combined cycle systems composed of two gas turbines and a steam turbine each. The modernized facility will have a smaller physical footprint, will utilize substantially less cooling water, and will produce more electricity. Final approval may come in late 2008.

Combined cycle units that will be operational in the future (pending modernization) will receive cooling water from this intake as well. The current capacity of the intake is 464,000 gpm, which would be reduced to 330,000 gpm following modernization.

No incidental lethal or injurious takings of marine mammals have been recorded in the past due to operation of the cooling water system at MBPP. Accordingly, there is minimal risk of such takings occurring in the future.

South Bay Power Plant (SBPP)

SBPP is a 707–MW facility owned and operated by Dynegy South Bay LLC (2007) located within the City of Chula Vista, San Diego County, California on the extreme southeastern end of San Diego Bay. The plant consists of four steam-powered generating units that are cooled by seawater taken in by the plant's cooling water pumps, and an air-cooled 20 MW gas turbine generator which does not use cooling water. The future status of SBPP is uncertain. There were plans to decommission the existing plant in 2010 and to replace it with a new plant near the same site. However, licensing and design of the new replacement plant are pending site selection and approval. The intake structures for the CWS draws up to 682 million gallons of water a day, or about 473,600 gpm, from San Diego Bay. Water is drawn into a shared intake structure for Units 1 and 2, and individual cooling intake structures for Units 3 and 4.

No incidental lethal or injurious takings of marine mammals have been recorded in the past due to operation of the cooling water system at SBPP; accordingly there is minimal risk of such takings occurring in the future.

Scattergood Generating Station (SGS)

SGS is an 830–MW facility owned by the City of Los Angeles and operated by the L.A. Department of Water and Power. SGS is located in the City of Los Angeles near the western border of the California coastal town of El Segundo, which is located to the south of Marina Del Ray and the north of Redondo Beach in Los Angeles County. SGS is a three-unit gas-fueled steam-electric generating facility incorporating eight circulating water pumps in its once-through CWS. A single cooling water intake structure is shared by all units. Maximum combined flow for all units is approximately 495 million gallons per day, or about 343,750 gpm.

A recorded total of 69 California sea lions were entrained by the generating station between 1989 and 2006, an average of four sea lions per year. Fifty-five of those were lethally taken and fourteen survived. Take rates have ranged from zero to nine per year. During the same period, two live and three dead harbor seals were entrained by the SGS CWS.

Long Beach Generating Station (LBGS)

LBGS is a 265–MW electric generating facility owned and operated by Long Beach Generation LLC, and indirect subsidiary of NRG Energy, Inc. The facility is located in western Los Angeles County, situated in the City of Long Beach along the coast of the Pacific Ocean. The power plant is bounded on the west and south by the Port of Long Beach and on the north by the City of Long Beach. LBGS was previously rated at 577 MW from nine generating units in a configuration that had been operated from 1977 to 2005, when the facility was shutdown. In 2007, LBGS was re-powered by refurbishing Units 1–4 into simple cycle gas turbine generators with air-cooled condensers. The refurbished LBGS no longer requires the seawater cooling water system (CWS). Units 5 through 9 remain retired in their previous configuration. The cooling water intake structure, consisting of a single forebay area within the Cerritos Channel in the Port of Long Beach and two intake pipes, and the single outfall tunnel were retired in 2007 by plugging the respective tunnels with concrete at the levee on the LBGS property. When previously operated, approximately 181,100 gpm were drawn through the intake during normal operations.

No marine mammals have been entrained at or found in or near the grounds of LBGS since 1977. Based on this environmental baseline, future incidental takes of less than one harbor seal and less than one California sea lion per year are anticipated.

El Segundo Generating Station (ESGS)

ESGS is a 1,020–MW facility located in the City of El Segundo, owned and operated by El Segundo Power LLC (indirect NRG subsidiary) (1998). The ESGS has been in operation since 1955 and utilizes two intake structures (individual structures for Units 1 and 2 and for Units 3 and 4) as part of the facility's once through cooling system. The intake structures consist of two pipes that extend offshore into Santa Monica Bay. Approximately 420,000 gpm are drawn through the intake system. A proposed modification is under review by the California Energy Commission which would eventually eliminate the use of one of the two intake structures.

Between 1978 and 2006, five harbor seals have been entrained at the ESGS, three of which were released unharmed. Between 1979 and 2006, a total of eleven California sea lions were entrained at or near ESGS, with eight mortalities. Based on this information, incidental takes of less than one harbor seal and less than one California sea lion per year are anticipated.

Encina Power Station (EPS)

EPS is a 965–MW facility located in western San Diego County, situated in the City of Carlsbad along the east coast of the Pacific Ocean. The power plant is bounded on the west by the Pacific Ocean, on the north by Agua Hedionda Lagoon, and on the south by the City of Carlsbad. EPS is owned by Cabrillo Power I LLC, an indirect subsidiary of NRG (2006). EPS began operation in 1954. The intake structure, serving all 5 steam powered units, is located at the south end of Agua Hedionda Lagoon. The maximum flow design of the CWS is 595,340 gpm. Proposed plans have been submitted to the California Energy Commission for additional air-cooled power generation to be located on site. As part of these plans, 3 of the current units would be retired, and a substantial decrease in cooling water would be required for plant operation.

One harbor seal was entrained at EPS in 2005. Nine California sea lions have been entrained at or found near EPS since 1978. Of the nine sea lions, eight were dead, although the evidence suggests that most of the animals were injured outside of the plant facilities and entered Aqua Hedionda Lagoon thereafter, such that injuries do not appear to be directly associated with plant operations. Based on this information, incidental takes of less than one harbor seal and less than one California sea lion per year are anticipated.

Reliant Energy Mandalay Generating Station (REMGS)

REMGS is a 577–MW facility owned and operated by Reliant Energy. REMGS is located on the southern California coast approximately 4.8 km west of the city of Oxnard. The plant consists of two steam-electric generating units, each rated at 215 MW, and one gas turbine unit rated at 147 MW. Ocean water for cooling purposes is supplied via a single cooling water system. Cooling water is drawn into the plant through Edison Canal, which originates approximately 4.2 km away at the northern end of Channel Islands Harbor in Oxnard, California. The capacity of the CWS is 176,000 gpm.

Two live and four dead California sea lions have been removed from Edison Canal since 1977. No harbor seals have been entrained by the REMGS CWS since 1977. Based on the information, incidental takes of less than one harbor seal and less than one California sea lion per year are anticipated.

Reliant Energy Ormond Beach Generating Station (OBGS)

OBGS is a two-unit, 1,500- MW gas-fueled, steam-electric generating facility located near the California coast town of Oxnard, southeast of the entrance to Port Hueneme. The plant is approximately 48 km south of Santa Barbara, and 97 km north of Los Angeles. The plant is owned by Reliant Energy and is currently being operated by Southern California Edison Company personnel. Ocean water for cooling purposes is supplied via a single cooling water system. The facility consists of two gas-fueled steam-electric units fed with cooling water via the CWS. Four circulating water pumps operate with a total capacity of 476,000 gpm.

Based on previous take information between 1991 and 2006, it is estimated that on average, less than one harbor seal and approximately one California sea lion could be taken lethally, and less than one harbor seal and sea lion could be taken alive per year. One dead northern elephant seal was entrained in 1998.

Diablo Canyon Power Plant (DCPP)

DCPP is owned and operated by Pacific Gas and Electric Company (PG&E), and is a nuclear-powered, steam-turbine power plant with a rated output of 2,200 MW of electricity. Commercial operation of Unit 1 began in May 1985, and Unit 2 in March 1986. DCPP is located on a coastal terrace midway between the communities of Morro Bay and Avila Beach on the central California coast. The local coast is a steep and rugged rocky shoreline that is exposed to heavy wave activity. Except for DCPP, the coast is largely uninhabited and undeveloped along the 16 km between the cities of Morro Bay and Avila Beach. The power plant draws in seawater from a constructed intake cove through a cooling water system to provide cooling for power plant operations. Four circulating water pumps combine to produce a cooling water flow of 1,704,000 gpm.

The California Stranding Network database indicates that two dead California sea lions have been entrained at the DCPP facility between 1982 and 2006. Less than 1 sea lion lethal take per year is expected.

San Onofre Nuclear Generating Station (SONGS)

SONGS is 2,300–MW facility owned in part by Southern California Edison (SCE), San Diego Gas and Electric Company, the City of Anaheim, and the City of Riverside, and is operated by SCE. It is located near the California coastal town of San Clemente, approximately 70 km north of San Diego and 95 km south of Los Angeles. Camp Pendleton U.S. Marine Corps Base adjoins the facility in northern San Diego County. The facility is consists of three units, although Unit 1 was taken offline in 1992. Ocean cooling water is drawn into two offshore structures. The combine intake flow is 1,660,000 gpm.

Based on previous take information between 1991 and 2006, it is estimated that on average approximately six harbor seals and fourteen California sea lions could be taken lethally, and approximately eleven seals and five sea lions could be taken alive per year.

Information Solicited

Interested persons may submit information, suggestions, and comments concerning the requests by the aforementioned 13 power stations in central and southern California (see ADDRESSES). All information, suggestions, and comments related to these requests and NMFS' development and implementation of regulations governing the incidental taking of marine mammals by power plant operations in central and southern California will be considered by NMFS, if appropriate, in developing the most effective regulations governing the issuance of letters of authorization.

Dated: February 12, 2008.

James H. Lecky,

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

[FR Doc. E8–3146 Filed 2–19–08; 8:45 am]

BILLING CODE 3510–22–S

COORDINATING COUNCIL ON JUVENILE JUSTICE AND DELINQUENCY PREVENTION

[OJP (OJJDP) Docket No. 1479]

Meeting of the Coordinating Council on Juvenile Justice and Delinquency Prevention

AGENCY: Coordinating Council on Juvenile Justice and Delinquency Prevention.

ACTION: Notice of meeting.

SUMMARY: The Coordinating Council on Juvenile Justice and Delinquency Prevention (Council) is announcing its March 7, 2008 meeting.

DATES: Friday, March 7, 2008, 9 a.m. to 12:30 p.m.

ADDRESSES: The meeting will take place at the White House Office of National Drug Control Policy, 750 17th Street, NW., 5th floor conference room, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: The Web site for the Coordinating Council at *http://www.juvenilecouncil.gov* or contact Robin Delany-Shabazz, Designated Federal Official, by telephone at 202–307–9963 [*Note:* this is not a toll-free telephone number], or by e-mail at *Robin.Delany-Shabazz@usdoj.gov.*

SUPPLEMENTARY INFORMATION: The Coordinating Council on Juvenile Justice and Delinquency Prevention, established pursuant to section 3(2)(A) of the Federal Advisory Committee Act (5 U.S.C. app. 2) will meet to carry out its advisory functions under section 206 of the Juvenile Justice and Delinquency Prevention Act of 2002, 42 U.S.C. 5601, *et seq.* Documents such as meeting announcements, agendas, minutes, and reports will be available on the Council's Web page, *http://www.JuvenileCouncil.gov.,* where you may also obtain information on the meeting.

Although designated agency representatives may attend, the Council membership is composed of the Attorney General (Chair), the Secretary of Health and Human Services, the Secretary of Labor, the Secretary of Education, the Secretary of Housing and Urban Development, the Administrator of the Office of Juvenile Justice and Delinquency Prevention (Vice Chair), the Director of the Office of National Drug Control Policy, the Chief Executive Officer of the Corporation for National and Community Service, and the Assistant Secretary of Homeland Security for U.S. Immigration and Customs Enforcement. Up to nine additional members are appointed by the Speaker of the House of Representatives, the Senate Majority Leader, and the President of the United States.

Meeting Agenda

The agenda for this meeting will include: (a) Presentations on Federal efforts to reduce demand for illicit drugs and non-medical use of prescription drugs among youth; (b) updates on Council Partnership Projects; and (c) applicable legislative and program updates; announcements and other business. The meeting is open to the public.

Registration

For security purposes, members of the public who wish to attend the meeting must pre-register online at *http://www.juvenilecouncil.gov/meetings.html* by February 29, 2008. Should problems arise with web registration, call Daryel Dunston at 240–221–4343 or send a request to register for the March 7, 2008 Council meeting to Mr. Dunston. Include name, title, organization or other affiliation, full address and phone, fax and email information and send to his attention either by fax at: 301–945–4295 or by e-mail to *ddunston@edjassociates.com.* Register no later than Friday, February 29, 2008.

Note: These are not toll-free telephone numbers.

Additional identification documents may be required. Space is limited.

Note: Photo identification will be required for admission to the meeting.

Written Comments

Interested parties may submit written comments by Friday, February 29, 2008, to Robin Delany-Shabazz, Designated Federal Official for the Coordinating Council on Juvenile Justice and Delinquency Prevention, at *Robin.Delany-Shabazz@usdoj.gov.* The Coordinating Council on Juvenile Justice and Delinquency Prevention expects that the public statements presented will not repeat previously submitted statements. Written questions and comments from the public may be invited at this meeting.

Dated: February 13, 2008.

J. Robert Flores,

Administrator.

[FR Doc. E8–3051 Filed 2–19–08; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Veterans' Advisory Board on Dose Reconstruction

AGENCY: Department of Defense, Defense Threat Reduction Agency.

ACTION: Advisory board meeting notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended) and the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended) the Defense Threat Reduction Agency (DTRA) and the Department of Veterans Affairs (VA) announce the following advisory board meeting:

Name of Committee: Veterans' Advisory Board on Dose Reconstruction (VBDR).

Dates of Meeting: April 2–3, 2008.

Location: Sheraton San Diego Hotel, Mission Valley, King and Knight Chamber Rooms, 1433 Camino Del Rio South, San Diego, California 92108.

Time: Wednesday, April 2, 2008, from 8–11 a.m. and 1–5 p.m. with a public comment session from 11 a.m.–12 p.m., and Thursday, April 3, 2008, from 8–10:15 a.m. and 11:15 a.m.–1:15 p.m. with a public comment session from 10:15–11:15 a.m.

Purpose of Meeting: To obtain, review and evaluate information related to the Board mission to provide guidance and oversight of the dose reconstruction and claims compensation programs for veterans of U.S.-sponsored atmospheric nuclear weapons tests from 1945–1962; veterans of the 1945–1946 occupation of Hiroshima and Nagasaki, Japan; and veterans who were prisoners of war in those regions at the conclusion of World War II. In addition, the advisory board will assist the VA and DTRA in communicating with the veterans.

Meeting Agenda: On Wednesday, the meeting will open with an introduction of the Board. The following briefings will be presented: ''Activities of Atomic-bomb Survivors (*Hibakusha*) Health Care Committee Based on *Hibakusha* Protection Law'' by Dr. Yasuhito Sasaki; ''Department of Veterans Affairs Quality Review of the Radiation Claims'' by Ms. Edna MacDonald; ''NTPR Dose Reconstruction and Veterans Communication Activities'' by Dr. Paul Blake; and ''VA Radiation Claims Compensation Program for Veterans'' by Mr. Thomas Pamperin.

On Thursday, the four subcommittees established during the inaugural VBDR session will report on their activities since September 2007. The subcommittees are the ''Subcommittee on DTRA Dose Reconstruction Procedures'', the ''Subcommittee on VA Claims Adjudication Procedures'', the ''Subcommittee on Quality Management and VA Process Integration with DTRA Nuclear Test Personnel Review Program'', and the ''Subcommittee on Communication and Outreach.'' The Board will close with a discussion of the Subcommittee reports, future business and meeting dates.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165, and the availability of space this meeting is open to the public. Seating is limited by the size of the meeting room. All persons must sign in legibly at the registration desk.

Written Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140(c), interested persons may submit a written statement for consideration by the Veterans' Advisory Board on Dose Reconstruction. Written statements should be no longer than two typewritten pages and must address: the issue, discussion, and recommended course of action. Supporting documentation may also be included as needed to establish the appropriate historical context and to provide any necessary background information.

Individuals submitting a written statement must submit their statement to the Board at 7910 Woodmont Ave., Suite 400, Bethesda, MD 20814–3095, at any point; however, if a written statement is not received at least 10 calendar days prior to the meeting, which is the subject of this notice, then it may not be provided to or considered by the Veterans' Advisory Board on Dose Reconstruction until its next open meeting.

The Chairperson will review all timely submissions with the Designated Federal Officer, and ensure they are provided to members of the Veterans' Advisory Board on Dose Reconstruction members before the meeting that is the subject of this notice. After reviewing the written comments, the Chairperson and the Designated Federal Officer may choose to invite the submitter of the comments to orally present their issue during an open portion of this meeting or at a future meeting.

The Chairperson, in consulting with the Designated Federal Officer, may, if desired, allot a specific amount of time for members of the public to present their issues for review and discussion by the Veterans' Advisory Board on Dose Reconstruction.

Public Comments: The April 2–3, 2008 meeting is open to the public, approximately one hour each day will be reserved for public comments on issues related to the task of the Veterans' Advisory Board on Dose Reconstruction, and speaking time will be assigned on a first-come, first-served basis. The amount of time per speaker will be determined by the number of requests received, but is nominally five minutes each. All persons who wish to speak at the meeting must sign in legibly at the registration desk. Questions from the public will not be considered during this period. Speakers who wish to expand on their oral statements are invited to submit a written statement to the Veterans' Advisory Board on Dose Reconstruction at 7910 Woodmont Ave., Suite 400, Bethesda, MD 20814–3095.

FOR FURTHER INFORMATION CONTACT: The Veterans' Advisory Board on Dose

Reconstruction toll free at 1–866–657–VBDR (8237). Additional information may be found at *http://vbdr.org.*

Dated: February 13, 2008.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E8–3085 Filed 2–19–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

Suspension of the Price Evaluation Adjustment for Small Disadvantaged Businesses

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice of 1-year suspension of the price evaluation adjustment for small disadvantaged businesses.

SUMMARY: The Director of Defense Procurement and Acquisition Policy has suspended the use of the price evaluation adjustment for small disadvantaged businesses (SDBs) in DoD procurements, as required by 10 U.S.C. 2323(e)(3), because DoD exceeded its 5 percent goal for contract awards to SDBs in fiscal year 2007. The suspension will be in effect for 1 year and will be reevaluated based on the level of DoD contract awards to SDBs achieved in fiscal year 2008.

DATES: *Effective Date:* March 10, 2008.

Applicability Date: This suspension applies to all solicitations issued during the period from March 10, 2008, to March 9, 2009.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Pollack, Defense Procurement and Acquisition Policy, OUSD(AT&L)DPAP(CPIC), 3015 Defense Pentagon, Washington, DC 20301–3015; telephone 703–697–8336; facsimile 703–614–1254.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 10 U.S.C. 2323(e), DoD has previously granted SDBs a 10 percent price preference in certain acquisitions. This price preference is implemented in Subpart 19.11 of the Federal Acquisition Regulation. Section 801 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Pub. L. 105–261) amended 10 U.S.C. 2323(e)(3) to prohibit DoD from granting such a price preference for a 1-year period following a fiscal year in which DoD achieved the 5 percent goal for contract awards established in 10 U.S.C. 2323(a). Since, in fiscal year 2007, DoD exceeded this 5 percent goal, use of this price preference in DoD acquisitions must be suspended for a 1-year period, from March 10, 2008, to March 9, 2009.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

[FR Doc. E8–3150 Filed 2–19–08; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to delete a System of Records.

SUMMARY: The Department of the Navy is deleting a system of records in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed actions will be effective without further notice on March 21, 2008 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (DNS–36), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Department of the Navy proposes to delete a system of records notice from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems reports.

Dated: February 13, 2008.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

MMN00017

SYSTEM NAME:

Armory Access and Individual Weapons Assignments (November 4, 1999, 64 FR 60174).

REASON:

Information combined under system of records notice NM08370–1, Weapons Registration.

[FR Doc. E8–3086 Filed 2–19–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; Migrant and Seasonal Farmworkers Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2008

Catalog of Federal Domestic Assistance (CFDA) Number: 84.128G.

DATES: Applications Available: February 20, 2008.

Deadline for Transmittal of Applications: May 20, 2008.

Deadline for Intergovernmental Review: July 21, 2008.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Migrant and Seasonal Farmworkers program is to provide grants for vocational rehabilitation services to individuals with disabilities who are migrant and seasonal farmworkers, as determined in accordance with rules prescribed by the Secretary of Labor, and to the family members who are residing with such individuals (whether or not such family members are individuals with disabilities).

Priorities: This competition uses a competitive preference priority and an invitational priority. In accordance with 34 CFR 75.105(b)(2)(ii), the competitive preference priority is from the Education Department General Administrative Regulations (34 CFR 75.225(c)(2)).

Competitive Preference Priority: For FY 2008 and any subsequent year in which we make awards based on the list of unfunded applicants from this competition, this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i) we will award five additional points to an application that meets this priority.

This priority is:

Novice Applicant.

The applicant must be a novice applicant. Novice applicant means any applicant for a grant from the Department that:

a. Has never received a grant or subgrant under the Migrant and Seasonal Farmworkers program;

b. Has never been a member of a group application, submitted in

accordance with 34 CFR 75.127 through 75.129, that received a grant under the Migrant and Seasonal Farmworkers program; and

c. Has not had an active discretionary grant from the Federal Government in the five years before the deadline date for applications under the Migrant and Seasonal Farmworkers program.

Invitational Priority: For FY 2008 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is an invitational priority. Under 34 CFR 75.105(c)(1) we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

This priority is:

The Secretary is especially interested in applications that propose to engage faith-based and community organizations in the delivery of services under the Migrant and Seasonal Farmworkers program.

Program Authority: 29 U.S.C. 774.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98 and 99. (b) The regulations in 34 CFR part 369.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $337,700.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2009 from the list of unfunded applicants from this competition.

Estimated Range of Awards: $145,000–$195,000.

Estimated Average Size of Awards: $168,850.

Estimated Number of Awards: 2.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* State designated agencies (interpreted to mean designated State agencies as defined in section 7(8) of the Rehabilitation Act of 1973, as amended); nonprofit agencies working in collaboration with a State designated agency; and local agencies working in collaboration with a State designated agency.

2. *Cost Sharing or Matching:* Cost sharing of at least 10 percent of the total cost of the project is required of grantees under the Migrant and Seasonal Farmworkers Program. See 29 U.S.C. 774(a)(1).

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone, toll free: 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.ed.gov/pubs/edpubs.html* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application package from ED Pubs, be sure to identify this competition as follows: CFDA number 84.128G.

Individuals with disabilities can obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Alternative Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

3. *Submission Dates and Times:*

Applications Available: February 20, 2008.

Deadline for Transmittal of Applications: May 20, 2008.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: July 21, 2008.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section in this notice.

6. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Migrant and Seasonal Farmworkers Program, CFDA Number 84.128G, must be submitted electronically using the Governmentwide Grants.gov Apply site at *http://www.Grants.gov* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the Migrant and Seasonal Farmworkers Program at *http://www.Grants.gov* You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.128, not 84.128G).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

• Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date and time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.

• The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf*

• To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process (see *http://www.grants.gov/applicants/get_registered.jsp*). These steps include (1) registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*). You also must provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov. In addition you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance).

• You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system;

and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Sonja T. Turner, U.S. Department of Education, 400 Maryland Avenue, SW., room 5089, Potomac Center Plaza (PCP), Washington, DC 20202–2740. FAX: (202) 245–7593.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service:
U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.128G), 400 Maryland Avenue, SW., Washington, DC 20202–4260;

or

By mail through a commercial carrier:
U.S. Department of Education, Application Control Center, Stop 4260, Attention: (CFDA Number 84.128G), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.128G), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from 34 CFR 75.210 and are listed in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section in this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section in this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* The Government Performance and Results Act of 1993 (GPRA) directs Federal departments and agencies to improve the effectiveness of their programs by engaging in strategic planning, setting outcome-related goals for programs, and measuring program results against those goals. Program officials must develop performance measures for all their grant programs to assess their performance and effectiveness. The Rehabilitation Services Administration (RSA) has established the following performance measures for the Migrant and Seasonal Farmworkers Program and will use these measures to assess the effectiveness of the program:

- Total number of migrant and seasonal farmworkers with disabilities who receive vocational rehabilitation (VR) services from the project each reporting period.
- Total number of migrant and seasonal farmworkers with disabilities in the project who also receive VR services from the designated State unit (the State VR agency) each reporting period.
- Total number of migrant and seasonal farmworkers with disabilities in the project who achieved employment outcomes each reporting period (an employment outcome refers to maintaining employment for at least 90 consecutive days).
- Total number of migrant and seasonal farmworkers with disabilities served by the project who exited the project each reporting period without achieving an employment outcome.
- Total number of migrant and seasonal farmworkers with disabilities served by the project who exited the project each reporting period without achieving an employment outcome but who transfer to another State.
- Percentage of migrant and seasonal farmworkers with disabilities served by the project who achieved employment outcomes each reporting period (number of migrant and seasonal farmworkers with disabilities served by the project who achieved employment outcomes each reporting period divided by the number of migrant and seasonal farmworkers with disabilities who

received services through the project that reporting period).

• Total number of migrant and seasonal farmworkers with disabilities served by the project who remain employed three months after achieving an employment outcome.

• Annual cost per participant who achieved an employment outcome (annual cost refers to the annual Federal funds awarded to the project divided by the actual number of migrant and seasonal farmworkers in the project who achieved employment outcomes that reporting period).

Each grantee must annually report on these measures in its annual performance report. In addition, the Migrant and Seasonal Farmworkers Program is part of the Administration's job training and employment common measures initiative. The common measures for job training and employment programs targeting adults are as follows: Entered employment (percentage employed in the first quarter after program exit); retention in employment (percentage of those employed in the first quarter after exit that were still employed in the second and third quarter after program exit); earnings increase (percentage change in earnings pre-registration to post-program and first quarter after exit to third quarter after exit); and efficiency (annual cost per participant). The Department is currently working toward the implementation of these common measures. Each grantee will be required to collect and report data for the common measures when they are approved for implementation.

We require reporting of annual performance measures at the time of the continuation award processing to ensure that grantees separately report information for individuals served exclusively by their project.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Sonja T. Turner, U.S. Department of Education, 400 Maryland Avenue, SW., room 5089, PCP, Washington, DC 20202–2649. Telephone: (202) 245–7557 or e-mail: *Sonja.Turner@ed.gov.*

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Alternative Format: Individuals with disabilities can obtain this document and a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD, call the FRS, toll-free, at 1–800–877–8339.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: February 14, 2008.

Tracy R. Justesen,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E8–3143 Filed 2–19–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Notice of Interim Approval

AGENCY: Southeastern Power Administration, DOE.

ACTION: Notice of rate extension.

SUMMARY: The Deputy Secretary of Energy, confirmed and approved on an interim basis, Interim Rate Schedules CBR–1–F, CSI–1–F, CEK–1–F, CM–1–F, CC–1–G, CK–1–F, and CTV–1–F. The rate schedules were approved on an interim basis through September 30, 2008. The new rates take effect on February 25, 2008, and are subject to confirmation and approval on a final basis by the Federal Energy Regulatory Commission.

DATES: Approval of the rate schedules on an interim basis is effective February 25, 2008 through September 30, 2008.

FOR FURTHER INFORMATION CONTACT: Leon Jourolmon, Assistant Administrator, Finance & Marketing, Southeastern Power Administration, Department of Energy, 1166 Athens Tech Road, Elberton, Georgia 30635–6711, (706) 213–3800.

SUPPLEMENTARY INFORMATION: On February 28, 2007, the Administrator of Southeastern Power Administration confirmed and approved Interim Wholesale Power Rate Schedules CBR–1–F, CSI–1–F, CEK–1–F, CM–1–F, CC–1–G, CK–1–F, and CTV–1–F for the period from February 25, 2007 to February 24, 2008. A copy of the February 28, 2007, Order is included in the Background Section. This order extends approval of these rate schedules to September 30, 2008.

Dated: February 5, 2008.

Clay Sell,

Deputy Secretary of Energy.

[Rate Order: No. SEPA–49]

In the Matter of:

Southeastern Power Administration Cumberland System Rates;

Order Confirming and Approving Power Rates on an Interim Basis

Pursuant to Sections 302(a) and 301(b) of the Department of Energy Organization Act, Public Law 95–91, the functions of the Secretary of the Interior and the Federal Power Commission under Section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, relating to the Southeastern Power Administration (Southeastern) were transferred to and vested in the Secretary of Energy. By Delegation Order No. 0204–108, effective May 30, 1986, 51 FR 19744 (May 30, 1986), the Secretary of Energy delegated to Southeastern's Administrator the authority to develop power and transmission rates, delegated to the Under Secretary of Energy the authority to confirm, approve, and place in effect such rates on an interim basis, and delegated to the Federal Energy Regulatory Commission (FERC) the authority to confirm, approve, and place into effect on a final basis or to disapprove rates developed by the Administrator under the delegation. On December 6, 2001, the Secretary of Energy issued Delegation Order No. 00–037.00, granting the Deputy Secretary of Energy authority to confirm, approve, and place into effect Southeastern's rates on an interim basis. This rate order is issued by the Deputy Secretary pursuant to said notice.

Background

The Federal Energy Regulatory Commission issued an order approving Rate Schedules CBR–1–E, CSI–1–E, CEK–1–E, CM–1–E, CC–1–F, CK–1–E and SJ–1–B for the sale of power from the Cumberland System August 2, 2004 (108 FERC ¶ 62,113). These rates were approved for a period from October 1, 2003, to September 30, 2008. These rate schedules were predicated on a marketing policy that provides peaking capacity, along with 1500 hours of energy with each kilowatt of capacity, to customers outside the Tennessee Valley Authority (TVA) transmission system.

Due to restrictions on the operation of the Wolf Creek Project imposed by the U.S. Army Corps of Engineers as a precaution to prevent failure of the dam, Southeastern has not been able to provide peaking capacity to these customers. An interim operating plan for the Cumberland System has provided these customers with energy that does not include capacity. Because the rate design incorporated in the existing rate schedules recovered all costs from capacity, new rate schedules were necessary to recover costs under the interim operating plan. Interim Wholesale Rate Schedules CBR–1–F, CSI–1–F, CEK–1–F, CM–1–F, CC–1–G, CK–1–F, and CTV–1–F were approved by the Administrator of Southeastern Power Administration on February 28, 2007 for a period ending February 24, 2008, unless the interim operating plan is revoked prior to such time.

Order for information purposes as signed by Southeastern's Administrator on February 28, 2007:

[Rate Order: No. SEPA–47] Southeastern Power Administration—Cumberland;

Order Confirming and Approving Power Rates for Short-Term Energy Sales on a Final Basis

Pursuant to Sections 302(a) and 301(b) of the Department of Energy Organization Act, Public Law 95–91, the functions of the Secretary of the Interior and the Federal Power Commission under Section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, relating to Southeastern Power Administration (Southeastern), were transferred to and vested in the Secretary of Energy. By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary of Energy delegated to the Administrator the authority to develop and place into effect on a final basis rates for short-term sales of capacity, energy, or transmission service. Existing DOE procedures for public participation in power rate adjustments (10 CFR part 903) were published on September 18, 1985.

Background

Power from the Cumberland System is presently sold under wholesale rate schedules CBR–1–E, CSI–1–E, CEK–1–E, CM–1–E, CC–1–F, CK–1–E, CTV–1–E, and SJ–1–B. These rate schedules were approved by FERC on August 2, 2004 (108 FERC 62113). The existing rate schedules are predicated on a marketing policy that provides peaking capacity, along with 1500 hours of energy with each kilowatt of capacity, to customers outside the Tennessee Valley Authority (TVA) transmission system. Due to restrictions on the operation of the Wolf Creek Project imposed by the U. S. Army Corps of Engineers as a precaution to prevent failure of the dam, Southeastern will not be able to provide peaking capacity to these customers. An interim operating plan for the Cumberland System will provide these customers with energy that does not include capacity. Because the rate design incorporated in the existing rate schedules recovers all costs from capacity, new rate schedules are necessary to recover costs under the interim operating plan. Interim wholesale rate schedules CBR–1–F, CSI–1–F, CEK–1–F, CM–1–F, CC–1–G, CK–1–F, and CTV–1–F are to replace the present rate schedules while the interim operating plan is in effect for the Cumberland System. Should the interim operating plan become unnecessary prior to September 30, 2008, rate schedules CBR–1–E, CSI–1–E, CEK–1–E, CM–1–E, CC–1–F, CK–1–E, CTV–1–E, and SJ–1–B will return to service.

Public Notice and Comment

Existing DOE procedures for public participation in power rate adjustments are documented in 10 CFR part 903. Section 903.1(c) exempts short term sales of capacity, energy, and transmission from public participation.

Discussion

The interim rate schedules are based upon a repayment study submitted to FERC October 7, 2003 in support of the existing rate schedules. An update of this repayment study submitted to the Deputy Secretary, Department of Energy, on March 28, 2006, demonstrated that rates were adequate to meet repayment criteria as required by existing law and DOE Procedure RA 6120.2. The Administrator hereby certifies that the rates are consistent with applicable law and that they are the lowest possible rates to customers consistent with sound business principles.

Environmental Impact

Southeastern has reviewed the possible environmental impacts of the rate adjustment under consideration and has concluded that, because the adjusted rates would not significantly affect the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, the proposed action is not a major Federal action for which an Environmental Impact Statement is required.

Availability of Information

Information regarding these rates, including studies and other supporting materials, is available for public review in the offices of Southeastern Power Administration, 1166 Athens Tech Road, Elberton, Georgia 30635.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm and approve, on a final basis, effective February 25, 2007, attached Interim Wholesale Power Rate Schedules CBR–1–F, CSI–1–F, CEK–1–F, CM–1–F, CC–1–G, CK–1–F, and CTV–1–F. The Interim Rate Schedules shall remain in effect through February 24, 2008, unless the interim operating plan is revoked prior to such time.

Public Notice and Comment

Notice of proposed rate extension was published in the **Federal Register** October 24, 2007, (72 FR 60356). Written comments were accepted on or before November 23, 2007. No written comments were received.

Discussion

System Repayment

An examination of Southeastern's revised system power repayment study, prepared in December 2007, for the Cumberland System, shows that with the proposed rates, all system power costs are paid within the 50-year repayment period required by existing law and DOE Order RA 6120.2. The Administrator of Southeastern has certified that the rates are consistent with applicable law and that they are the lowest possible rates to customers consistent with sound business principles.

Environmental Impact

Southeastern has reviewed the possible environmental impacts of the rate adjustment under consideration and has concluded that, because the adjusted rates would not significantly affect the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, the proposed action is not a major Federal action for which preparation of an Environmental Impact Statement is required. (10 CFR part 1021, subpart D, app. B4.3)

Availability of Information

Information regarding these rates, including studies, and other supporting materials is available for public review in the offices of Southeastern Power Administration, 1166 Athens Tech Road, Elberton, Georgia 30635–6711.

Submission to the Federal Energy Regulatory Commission

The rates hereinafter confirmed and approved on an interim basis, together with supporting documents, will be submitted promptly to FERC for confirmation and approval on a final basis, ending no later than September 30, 2008.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm and approve on an interim basis, effective February 25, 2008, attached Interim Wholesale Power Rate Schedules CBR–1–F, CSI–1–F, CEK–1–F, CM–1–F, CC–1–G, CK–1–F, and CTV–1–F. The rate schedules shall remain in effect on an interim basis through September 30, 2008, unless such period is extended or until FERC confirms and approves them or substitute rate schedules on a final basis.

Dated: February 5, 2008.

Clay Sell

Deputy Secretary of Energy.

Interim Wholesale Power Rate Schedule CBR–1–F

Availability

This rate schedule shall be available to Big Rivers Electric Corporation and includes the City of Henderson, Kentucky (hereinafter called the Customer).

Applicability

This rate schedule shall be applicable to electric capacity and energy available from the Dale Hollow, Center Hill, Wolf Creek, Cheatham, Old Hickory, Barkley, J. Percy Priest and Cordell Hull Projects (all of such projects being hereinafter called collectively the ''Cumberland Projects'') and sold in wholesale quantities.

Character of Service

The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of sixty hertz. The power shall be delivered at nominal voltages of 13,800 volts and 161,000 volts to the transmission system of Big Rivers Electric Corporation.

Points of Delivery

Capacity and energy delivered to the Customer will be delivered at points of interconnection of the Customer at the Barkley Project Switchyard, at a delivery point in the vicinity of the Paradise steam plant and at such other points of delivery as may hereafter be agreed upon by the Government and TVA.

Monthly Rate

The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand Charge

None.

Energy Charge

12.16 mills per kilowatt-hour.

Transmission

The Customer will pay a ratable percent listed below of the credit the Administrator of Southeastern Power Administration (Administrator) provides to the Tennessee Valley Authority (TVA) as consideration for delivering capacity and energy for the account of the Administrator to points of delivery of Other Customers or interconnection points of delivery with other electric systems for the benefit of Other Customers, as agreed by contract between the Administrator and TVA.

	Percent
Big Rivers Electric Corporation	32.660
City of Henderson, Kentucky	2.202

Energy To Be Furnished by the Government

The Customer will receive a ratable share of the energy made available by the Nashville District of the U. S. Army Corps of Engineers.

Billing Month

The billing month for power sold under this schedule shall end at 2400 hours CDT or CST, whichever is currently effective, on the last day of each calendar month.

Conditions of Service

The customer shall at its own expense provide, install, and maintain on its side of each delivery point the equipment necessary to protect and control its own system. In so doing, the installation, adjustment, and setting of all such control and protective equipment at or near the point of delivery shall be coordinated with that which is installed by and at the expense of TVA on its side of the delivery point.

Interim Wholesale Power Rate Schedule CSI–1–F

Availability

This rate schedule shall be available to Southern Illinois Power Cooperative (hereinafter the Customer).

Applicability

This rate schedule shall be applicable to electric capacity and energy available from the Dale Hollow, Center Hill, Wolf Creek, Cheatham, Old Hickory, Barkley, J. Percy Priest and Cordell Hull Projects (all of such projects being hereinafter called collectively the ''Cumberland Projects'') and sold in wholesale quantities.

Character of Service

The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of sixty hertz. The power shall be delivered at nominal voltages of 13,800 volts and 161,000 volts to the transmission system of Big Rivers Electric Corporation.

Points of Delivery

Capacity and energy delivered to the Customer will be delivered at points of interconnection of the Customer at the Barkley Project Switchyard, at a delivery point in the vicinity of the Paradise steam plant and at such other points of delivery as may hereafter be agreed upon by the Government and TVA.

Monthly Rate

The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand Charge

None.

Energy Charge

12.16 mills per kilowatt-hour.

Transmission Charge

The Customer will pay 5.138 percent of the credit the Administrator of Southeastern Power Administration (Administrator) provides to the Tennessee Valley Authority (TVA) as consideration for delivering capacity and energy for the account of the Administrator to points of delivery of Other Customers or interconnection points of delivery with other electric systems for the benefit of Other Customers, as agreed by contract between the Administrator and TVA.

Energy To Be Furnished by the Government

The Customer will receive a ratable share of the energy made available by the Nashville District of the U. S. Army Corps of Engineers.

Billing Month

The billing month for power sold under this schedule shall end at 2400 hours CDT or CST, whichever is

currently effective, on the last day of each calendar month.

Interim Wholesale Power Rate Schedule CEK–1–F

Availability

This rate schedule shall be available to East Kentucky Power Cooperative (hereinafter called the Customer).

Applicability

This rate schedule shall be applicable to electric capacity and energy available from the Dale Hollow, Center Hill, Wolf Creek, Cheatham, Old Hickory, Barkley, J. Percy Priest and Cordell Hull Projects (all of such projects being hereinafter called collectively the ''Cumberland Projects'') and power available from the Laurel Project and sold in wholesale quantities.

Character of Service

The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of sixty hertz. The power shall be delivered at nominal voltages of 161,000 volts to the transmission systems of the Customer.

Points of Delivery

The points of delivery will be the 161,000 volt bus of the Wolf Creek Power Plant and the 161,000 volt bus of the Laurel Project. Other points of delivery may be as agreed upon.

Monthly Rate

The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand Charge

None.

Energy Charge

12.16 mills per kilowatt-hour.

Transmission Charge

The Customer will pay 31.192 percent of the credit the Administrator of Southeastern Power Administration (Administrator) provides to the Tennessee Valley Authority (TVA) as consideration for delivering capacity and energy for the account of the Administrator to points of delivery of Other Customers or interconnection points of delivery with other electric systems for the benefit of Other Customers, as agreed by contract between the Administrator and TVA.

Energy To Be Furnished by the Government

The Customer will receive a ratable share of the energy made available by the Nashville District of the U. S. Army Corps of Engineers.

Billing Month

The billing month for power sold under this schedule shall end at 2400 hours CDT or CST, whichever is currently effective, on the last day of each calendar month.

Conditions of Service

The customer shall at its own expense provide, install, and maintain on its side of each delivery point the equipment necessary to protect and control its own system. In so doing, the installation, adjustment and setting of all such control and protective equipment at or near the point of delivery shall be coordinated with that which is installed by and at the expense of TVA on its side of the delivery point.

Interim Wholesale Power Rate Schedule CM–1–F

Availability

This rate schedule shall be available to the South Mississippi Electric Power Association, Municipal Energy Agency of Mississippi, and Mississippi Delta Energy Agency (hereinafter called the Customers).

Applicability

This rate schedule shall be applicable to electric capacity and energy available from the Dale Hollow, Center Hill, Wolf Creek, Cheatham, Old Hickory, Barkley, J. Percy Priest and Cordell Hull Projects (all of such projects being hereinafter called collectively the ''Cumberland Projects'') and sold in wholesale quantities.

Character of Service

The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of sixty hertz. The power shall be delivered at nominal voltages of 161,000 volts to the transmission systems of Mississippi Power and Light.

Points of Delivery

The points of delivery will be at interconnection points of the Tennessee Valley Authority system and the Mississippi Power and Light system. Other points of delivery may be as agreed upon.

Monthly Rate

The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand Charge

None.

Energy Charge

12.16 mills per kilowatt-hour.

Transmission Charge

The Customer will pay a ratable percent listed below of the credit the Administrator of Southeastern Power Administration (Administrator) provides to the Tennessee Valley Authority (TVA) as consideration for delivering capacity and energy for the account of the Administrator to points of delivery of Other Customers or interconnection points of delivery with other electric systems for the benefit of Other Customers, as agreed by contract between the Administrator and TVA.

	Percent
Mississippi Delta Energy Agency	2.058
Municipal Energy Agency of Mississippi	3.447
South Mississippi EPA	9.358

Energy To Be Furnished by the Government

The Customer will receive a ratable share of the energy made available by the Nashville District of the U. S. Army Corps of Engineers.

Billing Month

The billing month for power sold under this schedule shall end at 2400 hours CDT or CST, whichever is currently effective on the last day of each calendar month.

Interim Wholesale Power Rate Schedule CC–1–G

Availability

This rate schedule shall be available to public bodies and cooperatives served through the facilities of Carolina Power & Light Company, Western Division (hereinafter called the Customers).

Applicability

This rate schedule shall be applicable to electric capacity and energy available from the Dale Hollow, Center Hill, Wolf Creek, Cheatham, Old Hickory, Barkley, J. Percy Priest and Cordell Hull Projects (all of such projects being hereinafter called collectively the ''Cumberland Projects'') and sold in wholesale quantities.

Character of Service

The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of sixty hertz. The power shall be delivered at nominal voltages of 161,000 volts to the transmission system of Carolina Power & Light Company, Western Division.

Points of Delivery

The points of delivery will be at interconnecting points of the Tennessee Valley Authority system and the Carolina Power & Light Company, Western Division system. Other points of delivery may be as agreed upon.

Monthly Rate

The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand Charge

None.

Energy Charge

12.94 mills per kilowatt-hour.

TVA Transmission Charge

The Customer will pay a ratable percent listed below of the credit the Administrator of Southeastern Power Administration (Administrator) provides to the Tennessee Valley Authority (TVA) as consideration for delivering capacity and energy for the account of the Administrator to points of delivery of Other Customers or interconnection points of delivery with other electric systems for the benefit of Other Customers, as agreed by contract between the Administrator and TVA.

	Percent
French Broad EMC	1.713
Haywood EMC	0.501
Town of Waynesville	0.355

CP&L Transmission Charge

The Customer will way a ratable percent listed below of the charge for transmission service furnished by Carolina Power & Light Company, Western Division.

	Percent
French Broad EMC	66.667
Haywood EMC	19.512
Town of Waynesville	13.821

Energy To Be Furnished by the Government

The Government will sell to the customer and the customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to Carolina Power & Light Company (less applicable losses). The Customer's contract demand and accompanying energy allocation will be divided pro rata among its individual delivery points served from the Carolina Power & Light Company's, Western Division transmission system.

Billing Month

The billing month for power sold under this schedule shall end at 2400 hours CDT or CST, whichever is currently effective, on the last day of each calendar month.

Interim Wholesale Power Rate Schedule CK–1–F

Availability

This rate schedule shall be available to public bodies served through the facilities of Kentucky Utilities Company, (hereinafter called the Customers.)

Applicability

This rate schedule shall be applicable to electric capacity and energy available from the Dale Hollow, Center Hill, Wolf Creek, Cheatham, Old Hickory, Barkley, J. Percy Priest and Cordell Hull Projects (all of such projects being hereinafter called collectively the ''Cumberland Projects'') and sold in wholesale quantities.

Character of Service

The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of sixty hertz. The power shall be delivered at nominal voltages of 161,000 volts to the transmission systems of Kentucky Utilities Company.

Points of Delivery

The points of delivery will be at interconnecting points between the Tennessee Valley Authority system and the Kentucky Utilities Company system. Other points of delivery may be as agreed upon.

Monthly Rate

The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand Charge

None.

Energy Charge

12.16 mills per kilowatt-hour.

Transmission Charge

The Customer will pay a ratable percent listed below of the credit the Administrator of Southeastern Power Administration (Administrator) provides to the Tennessee Valley Authority (TVA) as consideration for delivering capacity and energy for the account of the Administrator to points of delivery of Other Customers or interconnection points of delivery with other electric systems for the benefit of Other Customers, as agreed by contract between the Administrator and TVA.

	Percent
City of Barbourville	0.404
City of Bardstown	0.412
City of Bardwell	0.099
City of Benham	0.046
City of Corbin	0.477
City of Falmouth	0.108
City of Frankfort	2.866
City of Madisonville	1.432
City of Nicholasville	0.469
City of Owensboro	4.587
City of Paris	0.250
City of Providence	0.226

Energy To Be Furnished by the Government

The Customer will receive a ratable share of the energy made available by the Nashville District of the U.S. Army Corps of Engineers.

Billing Month

The billing month for power sold under this schedule shall end at 2400 hours CDT or CST, whichever is currently effective on the last day of each calendar month.

Interim Wholesale Power Rate Schedule CTV–1–F

Availability

This rate schedule shall be available to the Tennessee Valley Authority (hereinafter called TVA).

Applicability

This rate schedule shall be applicable to electric capacity and energy generated at the Dale Hollow, Center Hill, Wolf Creek, Old Hickory, Cheatham, Barkley, J. Percy Priest, and Cordell Hull Projects (all of such projects being hereafter called collectively the ''Cumberland Projects'') and the Laurel Project sold under agreement between the Department of Energy and TVA.

Character of Service

The electric capacity and energy supplied hereunder will be three-phase alternating current at a frequency of approximately 60 Hertz at the outgoing terminals of the Cumberland Projects' switchyards.

Monthly Rates

The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand Charge

None.

Energy Charge

11.92 mills per kilowatt-hour.

Energy To Be Made Available

The Customer will receive a ratable share of the energy made available by the Nashville District of the U.S. Army Corps of Engineers.

Billing Month

The billing month for capacity and energy sold under this schedule shall end at 2400 hours CDT or CST, whichever is currently effective, on the last day of each calendar month.

Power Factor

TVA shall take capacity and energy from the Department of Energy at such power factor as will best serve TVA's system from time to time; provided, that TVA shall not impose a power factor of less than .85 lagging on the Department of Energy's facilities which requires operation contrary to good operating practice or results in overload or impairment of such facilities.

[FR Doc. E8–3108 Filed 2–19–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR07–22–000]

BP West Coast Products LLC, Complainant, v. Calnev Pipe Line LLC, Respondent; Notice of Amended Complaint

February 13, 2008.

Take notice that on February 11, 2008, BP West Coast Products LLC (BP) tendered for filing its First Amended Second Original complaint against Calnev Pipe Line LLC (Calnev), challenging all of Calnev's transportation and terminalling rates as unjust and unreasonable. BP requests that the Commission review and investigate Calnev's rates; set the proceeding for an evidentiary hearing to determine just and reasonable rates for Calnev; require the payment of refunds and reparations starting two years before the date of complaint for all rates; and award such other relief as is necessary and appropriate under the Interstate Commerce Act.

BP states that copies the complaint were served on Calnev.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on March 3, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–3121 Filed 2–19–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR07–19–000]

ConocoPhillips Company, Complainant, v. Calnev Pipe Line, L.L.C. Respondent; Notice of Amended Complaint

February 13, 2008.

Take notice that on February 11, 2008, ConocoPhillips Company (ConocoPhillips), tendered for filing an amendment to its complaint filed on August 20, 2007 against Calnev Pipe Line, L.L.C. ConocoPhillips states that, except as modified and supplemented by this amendment, the allegations and supporting evidence contained in the original complaint remain unchanged. In the instant filing, ConcoPhillips amends its complaint to include supplemental analysis.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on March 3, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–3120 Filed 2–19–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP08–69–000]

CenterPoint Energy Gas Transmission Company; Notice of Amendment Application

February 12, 2008.

On February 4, 2008, in Docket No. CP08–69–000, CenterPoint Energy Gas Transmission Company (CEGT) pursuant to section 7(c) of the Natural Gas Act, as amended, and section 157 Subparts A and C of the Federal Energy Regulatory Commission's (Commission)

regulations, filed to amend its certificate. The request would approve construction of the proposed Tontitown Project (Project), consisting of a new 16-mile 24-inch diameter natural gas pipeline in Logan and Franklin Counties, Arkansas between the new 10,310 horsepower Poteau compressor station, near the city of Poteau in Le Flore County, Oklahoma and the Southwestern Electric Power Company's Harry D. Mattison Power Plant located in Tontitown, Arkansas. Project facilities would cost about $52.3 million. CEGT requests Commission issuance of all necessary authorizations on or before May 1, 2008, to enable CEGT to construct and place Project facilities in operation by December 2008.

Questions concerning this application should be directed to Lawrence O. Thomas, Director-Rates & Regulatory, CenterPoint Energy Gas Transmission Company, P.O. Box 21734, Shreveport, Lousiana 71151, or by calling 318–429–2804.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

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 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link *at http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on March 4, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–3044 Filed 2–19–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

February 13, 2008.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP08–193–000.

Applicants: Columbia Gulf Transmission Company.

Description: Columbia Gulf Transmission Company requests a two month extension of time to 5/1/08 to file its Annual Transportation Retainage Adjustment and one-time waiver of GTC Section 33.2 etc, effective 6/1/08.

Filed Date: 02/11/2008.

Accession Number: 20080212–0107.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 19, 2008.

Docket Numbers: RP08–194–000.

Applicants: Ozark Gas Transmission, L.L.C.

Description: Ozark Gas Transmission LLC submits Second Revised Sheet 69 et al to FERC Gas Tariff, Original Volume 1, to become effective 4/1/08.

Filed Date: 02/11/2008.

Accession Number: 20080212–0071.

Comment Date: 5 p.m. Eastern Time on Monday, February 25, 2008.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–3099 Filed 2–19–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–53–001]

Downeast Pipeline, LLC.; Supplemental Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Downeast LNG Project and Request for Comments on Environmental Issues Related to the Modification of the Proposed Pipeline Route

February 13, 2008.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) is preparing an environmental impact statement (EIS) that will discuss the environmental impacts of the Downeast Liquefied Natural Gas (LNG) Project proposed by Downeast LNG, Inc. and Downeast Pipeline, LLC (Downeast). The FERC is the lead federal agency in the preparation of the EIS, and is preparing the EIS in coordination with its cooperating agencies: the U.S. Army Corps of Engineers; the U.S. Department of Homeland Security, U.S. Coast Guard; the U.S. Environmental Protection Agency; the National Oceanic and Atmospheric Administration National Marine Fisheries Service; and the Maine Department of Environmental Protection. The EIS will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

This project was originally noticed by the FERC on March 13, 2006, with supplemental Notices of Intent on September 18, 2006 and December 1, 2006. This Supplemental Notice of Intent (NOI) discloses the modification of the proposed natural gas sendout pipeline route to avoid crossing the Moosehorn National Wildlife Refuge (NWR) and requests comments regarding the possible environmental impacts of this modification.

We [1] are specifically requesting comments on the new Proposed Route Option 6. Your input will help identify the issues that need to be evaluated in the EIS. Further details on how to submit comments are provided in the Public Participation section of this NOI. Please note that comments for this NOI are requested by March 14, 2008.

If you are a landowner receiving this notice, you may be contacted by a Downeast representative about the acquisition of a pipeline easement to construct, operate, and maintain the proposed facilities. Downeast would seek to negotiate a mutually acceptable agreement. However, if the pipeline is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, Downeast could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*), using the ''For Citizens'' link.

This Supplemental NOI is being sent to Federal, State, and local government agencies; elected officials; affected landowners; environmental and public interest groups; Indian tribes; commentors and other interested parties; and local libraries and newspapers. We encourage government representatives to notify their constituents of this amendment to the planned project and encourage them to comment on their areas of concern.

Summary of the Proposed Project

The project would consist of an onshore LNG import and storage terminal located on the south side of Mill Cove in the Town of Robbinston near the confluence of Passamaquoddy Bay and the St. Croix River in Washington County, Maine; and an approximately 30-mile-long natural gas sendout pipeline extending from the terminal to the existing Maritimes & Northeast (M&NE) pipeline system at the Baileyville, Maine Compressor Station.

The proposed amended route (Option 6) consists of the following:

- Approximately 29.8 miles of 30-inch-diameter natural gas transmission pipeline;
- Natural gas metering facilities;
- Pigging facilities; and
- Three mainline block valves.

The total length of Option 6 is approximately 1.2 miles shorter than the previously proposed route (Option 4). The new section of the pipeline around the Moosehorn NWR is approximately 7.5 miles in length.

Option 6 would follow the Option 4 route from milepost (MP) 0.0 to MP 10.2. Option 6 would depart from the Option 4 alignment at MP 10.2 and proceed northwest for approximately 1.4 miles, travel west for approximately 0.75 mile, and then run north for approximately 0.5 mile to Magurrewock Mountain. The route would then proceed on the south side of Magurrewock Mountain and cross U.S. Route 1. The route would then cross under the St. Croix River using a staged horizontal directional drill from MP 14.1 to MP 15.3. At MP 15.3, the alignment would parallel the Maine Central Railroad corridor along the St. Croix River. At MP 16.2, the pipeline would turn south away from the railroad corridor, turn southwest, and parallel U.S. Route 1 for approximately 1.3 miles. At MP 17.7, the new route would intersect the Option 4 alignment along the existing Eastern Maine Electrical Cooperative electrical transmission line corridor. Thereafter, Option 6 follows the Option 4 alignment to its endpoint at the existing M&NE Baileyville Compressor Station. In addition, Option 6 has minor route variations from the Option 4 alignment at MP 2.4, 8.5, 25.5, and 27.2.

There would be three mainline valve (MLV) stations on the Option 6 route. The MLV to be constructed on the LNG terminal site at the start of the sendout pipeline remains unchanged. The second MLV would be located at MP 16.85. This location is north of U.S. Route 1 and east of the intersection of U.S. Route 1 and Maine Route 191. It is an area that has been previously disturbed by commercial logging activities and would require only minimal clearing for construction of the facility. An access road to the MLV would be required from U.S. Route 1. The MLV and pigging facilities at the terminus of the sendout pipeline to be located at MP 29.8 within the Baileyville Compressor Station property boundary remains unchanged.

A map depicting the original Option 4 route and the proposed Option 6 route is included in Appendix 1.[2]

Public Participation

You can make a difference by providing us with your specific comments or concerns about this amendment to the planned project. By becoming a commentor, your concerns will be addressed in the EIS and considered by the Commission. Your comments should focus on the potential

[1] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the FERC's Office of Energy Projects.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's Web site at the ''e-Library'' link or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to e-Library, refer to the ''Additional Information'' section of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

environmental effects, reasonable alternatives (including alternative facility sites and pipeline routes), and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please follow these instructions:

- Send an original and two copies of your letter to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426.
- Label one copy of your comments for the attention of OEP/DG2E/Gas Branch 3.
- Reference Docket No. CP07–53–001 on the original and both copies.
- Mail your comments so that they will be received in Washington, DC on or before March 14, 2008.

The Commission strongly encourages electronic filing of any comments in response to this NOI. For information on electronically filing comments, please see the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide as well as information in 18 CFR 385.2001(a)(1)(iii). Before you can file comments, you will need to create a free account, which can be accomplished on-line.

Becoming an Intervenor

In addition to involvement in the EIS scoping process, you may want to become an official party to the proceeding known as an ''intervenor.'' Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must send one electronic copy (using the Commission's eFiling system) or 14 paper copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding.

If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214).[3] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

All commentors will be retained on our mailing list. If you do not want to send comments at this time but still want to keep informed and receive copies of the Draft and Final EISs, you must return the Mailing List Retention Form (Appendix 2). Also, indicate on the form your preference for receiving a paper version in lieu of an electronic version of the EIS on CD-ROM. If you do not return this form, we will remove your name from our mailing list.

Please note, if you have previously submitted comments or returned a Mailing List Retention Form, you are already on our mailing list and do not need to re-submit comments or a Mailing List Retention Form.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs at 1–866–208–FERC (3372) or on the FERC Internet Web site (*http://www.ferc.gov*) using the ''eLibrary link.'' Click on the eLibrary link, select ''General Search'' and enter the project docket number excluding the last three digits (*i.e.*, CP07–53) in the ''Docket Number'' field. Be sure you have selected an appropriate date range. For assistance with eLibrary, the eLibrary helpline can be reached at 1–866–208–3676, TTY (202) 502–8659, or by e-mail at *FercOnlineSupport@ferc.gov*. The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

In addition, the FERC now offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. To register for this service, go to *http://www.ferc.gov/esubscribenow.htm*.

Public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Finally, Downeast has established an Internet Web site for this project at *http://www.downeastlng.com*. The Web site includes a project overview, status, and answers to frequently asked questions. You can also request additional information by emailing Downeast at *info@downeastlng.com*.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–3119 Filed 2–19–08; 8:45 am]

BILLING CODE 6717–01–P

[3] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 10855–118]

Upper Peninsula Power Company; Notice of Intent To Prepare an Environmental Document and Soliciting Comments, Motions To Intervene, and Protests

February 12, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Intent to rebuild reservoir.

b. *Project No:* 10855–118.

c. *Date Filed:* January 23, 2008.

d. *Applicant:* Upper Peninsula Power Company.

e. *Name of Project:* Dead River Hydroelectric Project.

f. *Location:* The project is located on the Dead River in Marquette County, Michigan.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Shawn Puzen, Integrys Business Support LLC, 700 N. Adams Street, P.O. Box 19001, Green Bay, WI 54307–9001, Tel: (920) 433–1094.

i. *FERC Contact:* Peter Yarrington, Telephone (202) 502–6129, and e-mail: *peter.yarrington@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protest:* March 13, 2008.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

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:* Upper Peninsula Power Company has filed an Environmental Report addressing its intent to rebuild the Silver Lake Reservoir, part of the Dead River Hydroelectric Project (FERC No. 10855). The project consists of three separate developments: Silver Lake, Dead River (Hoist), and McClure. Silver Lake serves as a storage reservoir for downstream power generation. In May 2003, an emergency fuse plug on the Silver Lake Reservoir activated, resulting in the release of a large quantity of water, rock and sediment downstream. A river recovery project has been implemented, however, the elevation of the reservoir is significantly reduced. The licensee is proposing to rebuild Silver Lake Reservoir, which requires constructing a new dam #2 to replace the prior emergency fuse plug, raising the height of the main dam and a series of smaller dikes and dams that contain the reservoir, adding a new spillway, and raising the level of the current service spillway to the height of the main dam, ending its function as a spillway.

The Commission intends to prepare an environmental document under the National Environmental Policy Act (NEPA) for the Silver Lake Reservoir rebuilding project. The NEPA document will be used by the Commission to identify environmental impacts and to identify measures that would help mitigate the impacts caused by rebuild activities.

l. *Locations of the Application:* A copy of the application 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://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. 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, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659.

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, .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.

o. Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number (P–10855–118) 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.

q. Comments, protests and interventions 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.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–3046 Filed 2–19–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM08–2–000]

Pipeline Posting Requirements Under Section 23 of the Natural Gas Act; Notice of New Date for Technical Conference

February 12, 2008.

On January 10, 2008, the Commission issued a Notice of Technical Conference which was scheduled for February 28, 2008. Subsequently, on February 7, 2008, the Commission issued a notice of an extension of time (February 7 Notice) for filing comments in response to the Commission's Notice of Proposed Rulemaking issued December 21, 2007, in the above-referenced proceeding (NOPR).[1] In the February 7 Notice, the Commission also stated that the technical conference previously scheduled for February 28, 2008, would be rescheduled.

The staff technical conference in the above-referenced proceeding is rescheduled to take place on April 3, 2008, at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in the Commission Meeting Room (2–C) from 9:30 a.m. until 3 p.m. (EST). As set forth in the NOPR, the staff is holding this conference to address implementation issues associated with the posting proposal, such as obtaining and posting actual and scheduled flow information and obtaining and posting information from storage facilities.

As stated in the February 7, 2008 Notice, comments on the NOPR should be filed on or before March 13, 2008 and reply comments should be filed on or before April 14, 2008.

Anyone with questions about the conference or interested in speaking at the conference may send brief descriptions of the issues they would like to address to Saida Shaalan at *Saida.Shaalan@FERC.gov,* or phone Ms. Shaalan at 202–502–8278, before March 22, 2008. Thereafter, both questions and requests to speak should be sent to Eric Ciccoretti at *Eric.Ciccoretti@FERC.gov,* or 202–502–8493.

This conference will not be Web-cast nor transcribed. All interested persons are invited, and there is *no* registration fee to attend.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–208–1659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–3043 Filed 2–19–08; 8:45 am]

BILLING CODE 6717–01–P

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[1] Pipeline Posting Requirements under Section 23 of the Natural Gas Act, 73 Fed. Reg. 1116 (Jan. 7, 2008), FERC Stat. & Regs. ¶ 32,626 (2007).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PH08–21–000]

CH Energy Group, Inc.; Notice of Filing

February 12, 2008.

Take notice that on January 30, 2008, CH Energy Group, Inc. tendered for filing an explanation why certain change in facts does not affect CH Energy Group's single-state holding company system waiver under 18 CFR 366.3(c)(1).

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 online at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on February 20, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–3047 Filed 2–19–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08–68–000]

Trunkline LNG Company, LLC; Notice of Filing

February 12, 2008.

Take notice that on February 1, 2008, Trunkline LNG Company, LLC (Trunkline LNG), 5444 Westheimer Road, Houston, Texas 77056, filed an application, pursuant to section 3(a) of the Natural Gas Act (NGA) and Part 157 of the Commission's Rules and Regulations, to install and operate a new 1,500 electric motor-driven pipeline compressor and related facilities at the existing Trunkline LNG Terminal (Terminal) in Calcasieu Parish, Louisiana. The application is on file with the Commission and open for public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

The proposed compressor is necessary to capture and compress additional boil off gas when the Terminal is in a zero sendout mode of operation. Trunkline LNG states that the certificated sendout capacity of 1.8 Bcf per day of natural gas with a peak capacity of 2.1 Bch per day will not be changed. The construction and operation of the proposed facilities will occur entirely within the existing terminal's site. The estimated cost of the project is $3.5 million. Trunkline LNG currently provides firm terminalling services to BG LNG Services, LLC under its Rate Schedule FTS and FTS–2. Trunkline LNG proposed to place the facilities in service by August 2008.

Any questions regarding the application are to be directed to Mr. Stephen T. Veatch, Senior Director of Certificates and Tariffs, 5444 Westheimer Road, Houston, Texas 77056; phone number (713) 989–2024 or by e-mail at *Stephen.Veatch@sug.com*.

Any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the below listed comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

Motions to intervene, protests and 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 under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: March 4, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–3048 Filed 2–19–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08–70–000]

Portland Natural Gas Transmission System; Notice of Petition for Declaratory Order

February 12, 2008.

Take notice that on January 31, 2008, Portland Natural Gas Transmission System (PNGTS), under Rule 207(a)(2) of the Commission's Rules of Practice and Procedure, 18 CFR 385.207(a)(2) (2007), filed a petition for a declaratory order requesting that the Commission: (1) Confirm that PNGTS' system-wide firm year-round operationally available capacity as of November 1, 2008 will be 168,000 Mcf/day; and (2) find that PNGTS will not be in violation of the Natural Gas Act or any other legal obligations by denying firm service requests that, in combination with existing contracts requiring service after October 31, 2008, would obligate PNGTS to transport in excess of 168,000 Mcf/day on a firm year-round basis from Pittsburg to Dracut beginning on November 1, 2008.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and

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 date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time February 26, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–3045 Filed 2–19–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP07–44–002; CP07–45–001]

Southeast Supply Header, LLC; Notice of Amendment Application

February 13, 2008.

On February 1, 2008, in Docket Nos. CP07–44–002 and CP07–45–001, Southeast Supply Header, LLC (SESH) pursuant to section 7(c) of the Natural Gas Act, as amended, and section 157 Subpart A of the Federal Energy Regulatory Commission's (Commission) regulations, filed to amend its certificate issued on September 20, 2007 in *SESH,* 120 FERC ¶ 61,257. The requested amendment would approve the proposed Hi Fields Lateral, consisting of an 11-mile 16-inch outside diameter natural gas lateral pipeline between the SESH mainline pipeline in Mobile County, Alabama and the Daniel Electric Generating Plant in Jackson County, Mississippi. The Hi Fields Lateral would cost $19.4 million. In order to place the facilities in service by November, 2008, SESH requests Commission issuance of the necessary authorizations and waivers on or before September 1, 2008.

Questions concerning this application should be directed to Brian D. O'Neill, at Dewy & LeBoeuf LLP, 1101 New York Avenue, NW., Suite 1100, Washington, DC 20005–4213 or by calling 202–986–8012.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

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 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on March 5, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–3122 Filed 2–19–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR07–7–000]

Tesoro Refining and Marketing Company, Complainant, v. Calnev Pipe Line, L.L.C., Respondent; Notice of Amended Complaint

February 13, 2008.

Take notice that on February 8, 2008, Tesoro Refining and Marketing Company (Tesoro) amended its complaint dated January 30, 2007, in order to challenge grandfathered rates of Calnev Pipe Line, L.L.C. (Calnev). Tesoro contends that substantially changed circumstances have occurred with respect to Calnev's rates subsequent to the date of enactment of the Energy Policy Act of 1992.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date.

The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on March 3, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–3118 Filed 2–19–08; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8530–6]

Proposed Administrative Settlement Agreement Under Sections 104, 107 and Section 122 of the Comprehensive Environmental Response, Compensation, and Liability Act for the Fair Lawn Well Field Superfund Site, Located in Fair Lawn, Bergen County, NJ

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative settlement and opportunity for public comment.

SUMMARY: The United States Environmental Protection Agency (''EPA'') is proposing to enter into an administrative settlement agreement (''Settlement Agreement'') with Eastman Kodak Company, Fisher Scientific Company, LLC and Sandvik, Inc. (''Respondents'') pursuant to Sections 104, 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9604, 9607 and 9622. The Settlement Agreement provides for Respondents' payment of certain past costs and performance of the remedial investigation and feasibility study (''RI/FS'') for the Fair Lawn Well Field Superfund Site located within the Borough of Fair Lawn, Bergen County, New Jersey (''Site'').

In accordance with Section 122(i) of CERCLA, 42 U.S.C. 9622(i), this notice is being published to inform the public of the proposed Settlement Agreement and of the opportunity to comment. For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the proposed Settlement Agreement. EPA will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations that indicate that the proposed settlement is inappropriate, improper or inadequate. EPA's response to any comments received will be available for public inspection at EPA Region 2, 290 Broadway, 17th Floor, New York, New York 10007–1866.

DATES: Comments must be provided by March 21, 2008.

ADDRESSES: Comments should reference the Fair Lawn Well Field Superfund Site, EPA Docket No. CERCLA–02–2008–2003, and should be sent to the U.S. Environmental Protection Agency, Office of Regional Counsel, New Jersey Superfund Branch, 290 Broadway, 17th Floor, New York, NY 10007.

FOR FURTHER INFORMATION CONTACT: Damaris Urdaz Cristiano, Assistant Regional Counsel, New Jersey Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 17th Floor, 290 Broadway, New York, New York 10007–1866. Telephone: 212–637–3140.

SUPPLEMENTARY INFORMATION: A copy of the proposed administrative settlement, as well as background information relating to the settlement, may be obtained from Damaris Urdaz Cristiano, Assistant Regional Counsel, New Jersey Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 17th Floor, 290 Broadway, New York, New York 10007–1866. Telephone: 212–637–3140.

Dated: January 24, 2008.

George Pavlou,

Director, Emergency and Remedial Response Division.

[FR Doc. E8–3116 Filed 2–19–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007–1160; FRL–8348–7]

Ammonium Thiosulfate; Reregistration Eligibility Decision; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's Reregistration Eligibility Decision (RED) for the pesticide ammonium thiosulfate, and opens a public comment period on this document, related risk assessments, and other support documents. EPA has reviewed the pesticide ammonium thiosulfate through a modified, streamlined version of the public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

DATES: Comments must be received on or before April 21, 2008.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2007–1160, by one of the following methods:

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

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2007–1160. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

FOR FURTHER INFORMATION CONTACT: Tom Myers, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308-8589; fax number: (703) 308-7070; e-mail address: *myers.tom@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, 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 applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

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

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

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

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

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

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

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

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

II. Background

A. What Action is the Agency Taking?

Under section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is reevaluating existing pesticides to ensure that they meet current scientific and regulatory standards. Using a modified, streamlined version of its public participation process, EPA has completed a RED for the pesticide, ammonium thiosulfate under section 4(g)(2)(A) of FIFRA. Ammonium thiosulfate is an inorganic thiosulfate herbicide used to kill oxalis and spurge weeds on lawns in the western United States. There is one registered ammonium thiosulfate product registered in the U.S. Two other pesticides are included in the inorganic thiosulfate case: Potassium thiosulfate and calcium thiosulfate. There are currently no active potassium thiosulfate or calcium thiosulfate products registered in the US. EPA has determined that the database to support reregistration is substantially complete and the products containing ammonium thiosulfate will be eligible for reregistration, provided label language outlined in the RED is incorporated onto ammonium thiosulfate labels. Upon submission of any required product specific data under section 4(g)(2)(B) of FIFRA and any necessary changes to the registration and labeling (either to address any concerns identified in the RED or as a result of product specific data), EPA will make a final reregistration decision under section 4(g)(2)(C) of FIFRA for products containing ammonium thiosulfate.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004, (69 FR 26819) (FRL–7357–9) explains that in conducting these programs, the Agency is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. EPA can expeditiously reach decisions for pesticides like ammonium thiosulfate, which pose few risk concerns, have low use, affect few stakeholders, and require

little risk mitigation. Once EPA assesses uses and risks for such pesticides, the Agency may go directly to a decision and prepare a document summarizing its findings, such as the ammonium thiosulfate RED.

The reregistration program is being conducted under congressionally mandated timeframes, and EPA recognizes the need both to make timely decisions and to involve the public in finding ways to effectively mitigate pesticide risks. Ammonium thiosulfate, however, poses no risks that require mitigation. The Agency therefore is issuing the ammonium thiosulfate RED, its risk assessments, and related support materials simultaneously for public comment. The comment period is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the RED. All comments should be submitted using the methods in **ADDRESSES**, and must be received by EPA on or before the closing date. These comments will become part of the Agency Docket for ammonium thiosulfate. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

EPA will carefully consider all comments received by the closing date and will provide a Response to Comments Memorandum in the Docket and regulations.gov. If any comment significantly affects the document, EPA also will publish an amendment to the RED in the **Federal Register**. In the absence of substantive comments requiring changes, the ammonium thiosulfate RED will be implemented as it is now presented.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA, as amended, directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

List of Subjects

Environmental protection, Pesticides and pests.

Dated: January 30, 2008.

Steven Bradbury,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E8–2785 Filed 2–19–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2008–0087; FRL–8352–9]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from December 1, 2007 thru December 31, 2007 consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

DATES: Comments identified by the specific PMN number or TME number, must be received on or before March 21, 2008.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2007–0087, by one of the following methods:

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

• *Mail*: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Hand Delivery*: OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number EPA–HQ–OPPT–2007–0087. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–2007–0087. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

Docket: All documents in the docket are listed in the docket index available in regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT

Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT:

Colby Lintner, Regulatory Coordinator, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

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

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

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

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

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

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

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

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

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from December 1, 2007 thru December 31, 2007 consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs

This status report identifies the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

In Table I of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 48 PREMANUFACTURE NOTICES RECEIVED FROM: 12/01/07 TO 12/31/07

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–08–0113	12/05/07	03/03/08	Firmenich Inc.	(S) Aroma for use in fragrance mixtures, which in turn are used in perfumes, soaps, cleansers, etc.	(S) Oils, vanilla tahitensis
P–08–0114	12/05/07	03/03/08	CBI	(S) Redispersible polymer powder for dry mortar applications	(G) Alkanoic acid, ethenyl ester, polymer with ethenyl acetate and alkyl 2-propenoate
P–08–0115	12/07/07	03/05/08	CBI	(G) Open, non-dispersive use in packaging manufacture	(G) Olefin copolymer
P–08–0116	12/07/07	03/05/08	CBI	(G) Colourant dispersant	(G) Acrylic polymer

I. 48 PREMANUFACTURE NOTICES RECEIVED FROM: 12/01/07 TO 12/31/07—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–08–0117	12/07/07	03/05/08	CBI	(G) Non-dispersive use	(G) Bisphenol A / Epichlorohydrin epoxy polymer reaction product with amines, neutralized with methane sulfonic acid
P–08–0118	12/07/07	03/05/08	Newrub Tire Recycling, LLC	(S) Modifier used to devulcanize rubber	(G) Amide-alkyldioic acid compound
P–08–0119	12/07/07	03/05/08	CBI	(G) Raw material for cleaners	(G) 1-alkanaminium, *N*-(carboxymethyl)-3-(formylamino)-*N,N*-dimethyl-, inner salt
P–08–0120	12/07/07	03/05/08	CBI	(S) Hardener in a 2K system for coatings applications	(G) Ketamine resin
P–08–0121	12/05/07	03/03/08	CBI	(G) A synthetic resin raw material for industrial paints and coatings	(G) Acryloylisocyanate
P–08–0122	12/04/07	03/02/08	CBI	(G) Coating resin for organic electrophotographic photoconductor	(G) Siloxane and silicone polymer
P–08–0123	12/07/07	03/05/08	Eastman Kodak Company	(S) Intermediate used to manufacture imaging media/products	(G) Disubstituted benzenamine
P–08–0124	12/12/07	03/10/08	CBI	(S) Gas hydration inhibitor	(G) Quaternary ammonium compound
P–08–0125	12/12/07	03/10/08	Piedmont Chemical Industries L, LLC	(S) Resin for curable coatings	(G) Methacrylate ester of a polyester from an aromatic dicarboxylate and alkyl polyols
P–08–0126	12/13/07	03/11/08	CBI	(G) Adhesive polymer for open, non-dispersive use	(G) Blocked polyurethane based on hydrogenated C_{-18} fatty acids; 3-hydroxy-2-(hydroxymethyl)-2-methylpropanoic acid, methylenebis[isocyanatobenzene], polyalkylene glycol and trimethylolpropane
P–08–0127	12/13/07	03/11/08	Firmenich Inc.	(S) Aroma for use in fragrance mixtures, which in turn are used in perfumes, soaps, cleansers, etc.	(S) 2-hexenoic acid, 2-methyl-, methyl ester
P–08–0128	12/14/07	03/12/08	CBI	(G) Lubricant additive	(G) Neopentylglycol dialkanoate
P–08–0129	12/14/07	03/12/08	CBI	(G) Open, non-dispersive use.	(G) Acrylic, vinyl and methacrylic copolymer, quaternary salt with aryl sulfonate
P–08–0130	12/17/07	03/15/08	CBI	(G) Adhesive and raw material of paints	(G) Polyalkyleneoxide grafted polypropylene
P–08–0131	12/17/07	03/15/08	CBI	(G) Adhesive and raw material of paints	(G) Polyalkyleneoxide grafted polypropylene
P–08–0132	12/18/07	03/16/08	3M Company	(G) Protective treatment	(G) Blocked fluorochemical urethane
P–08–0133	12/19/07	03/17/08	Givaudan Fragrances Corporation	(G) Highly dispersive use	(S) Octanal, 6-methoxy-2,6-dimethyl-
P–08–0134	12/19/07	03/17/08	CBI	(G) Polyester substrat application auxiliary	(G) 4-(trisubstituted phenylazo)-3-methyl-*N,N*- disubstituted aniline
P–08–0135	12/20/07	03/18/08	CBI	(S) Adhesives and sealants	(G) Silylated acrylic resin
P–08–0136	12/20/07	03/18/08	CBI	(G) Specialty polyol for in-house manufacturing	(G) Polyethylene diethylene succinate
P–08–0137	12/20/07	03/18/08	CBI	(G) Mechanical devices	(G) Mdi polyester prepolymer
P–08–0138	12/20/07	03/18/08	Arkema Inc.	(S) Chain transfer agent	(S) Carbonotrithioic acid, bis(phenylmethyl)ester
P–08–0139	12/20/07	03/18/08	CBI	(G) Additive auxiliary for polyester substrates	(G) Disubstituted -6- hydroxyl-2-oxo-5-[disubstituted phenyl azo] -3-carbonitrile
P–08–0140	12/21/07	03/19/08	Zydex USA	(S) Waterproofing agent for cementitious building materials; surface modification agent for aggregates	(G) Organosilicon quaternary ammonium chloride salt
P–08–0141	12/21/07	03/19/08	Zydex USA	(G) Waterproofing agent for cementitious building materials; surface modification agent for aggregates	(G) Organosilicon quaternary ammonium chloride salt
P–08–0142	12/26/07	03/24/08	CBI	(G) Polymer stabilizer	(G) Organophosphite
P–08–0143	12/26/07	03/24/08	CBI	(G) Surfactant	(G) Alkoxylated linear alcohol
P–08–0144	12/26/07	03/24/08	CBI	(G) This PMN substance will be used for blending lubricants and its downstream end use will include both contained use and destructive use	(G) Distillates (Fischer - Tropsch), heavy
P–08–0145	12/26/07	03/24/08	CBI	(G) Polyurethane surfactant	(G) Trisiloxane copolymer

I. 48 PREMANUFACTURE NOTICES RECEIVED FROM: 12/01/07 TO 12/31/07—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–08–0146	12/26/07	03/24/08	ICI Performance Products LP	(S) Opacifying pigment for ceramic whiteware; opacifying pigment for building products; pigment for paints and coatings; pigment for specialty papers	(S) Diphosphoric acid, calcium salt (1:1)
P–08–0147	12/26/07	03/24/08	CBI	(G) Thermal ink transfer ribbon	(G) Modified polycarbonate
P–08–0148	12/21/07	03/19/08	CBI	(G) Additive for coating compositions	(G) Substituted phthalocyanine
P–08–0151	12/26/07	03/24/08	CBI	(S) Disperse dye for textile	(G) Substituted nitro phenyl azo
P–08–0152	12/26/07	03/24/08	3M	(G) Manufacture of plastic film	(G) Glycol modified pen (polyethylene naphthalate) polyester
P–08–0153	12/21/07	03/19/08	The Dow Chemical Company	(S) Polymer intermediate for polyurethane foam	(G) Polymer of fatty acids methyl esters hydroformylation products, hydrogenated, with alkylene oxides
P–08–0154	12/21/07	03/19/08	The Dow Chemical Company	(S) Polymer intermediate for polyurethane foam	(G) Polymer of fatty acids methyl esters hydroformylation products, hydrogenated, with alkylene oxides
P–08–0155	12/21/07	03/19/08	The Dow Chemical Company	(S) Polymer intermediate for polyurethane foam	(G) Polymer of fatty acids methyl esters hydroformylation products, hydrogenated, with alkylene oxides
P–08–0156	12/28/07	03/26/08	Ashland Inc., Environmental Health and Safety	(G) Lamination adhesive	(G) Polyalkylester, polymer with .alpha.-hydro-.omega.-hydroxypoly[oxy(methyl-1,2-ethanediyl)], 3-hydroxy-2-(hydroymethyl)-2-methylpropanoic acid and alkyldiisocyanate, ammonium salt
P–08–0157	12/31/07	03/29/08	CBI	(G) Raw material for the manufacturing of release coatings	(G) Quaternary ammonium compounds, dialkyl dimethyl, halides, reaction products with silica

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

II. 51 NOTICES OF COMMENCEMENT FROM: 12/01/07 TO 12/31/07

Case No.	Received Date	Commencement Notice End Date	Chemical
P–03–0694	12/03/07	11/08/07	(G) Rosin, polymer with a monocarboxylic acid, a phenol, maleic anhydride, formaldehyde and pentaerythritol, metal salts
P–05–0149	12/10/07	11/08/07	(S) 3-cyclohexene-1-carboxylic acid, 2,6,6-trimethyl-, methyl ester, (1r,2s)-
P–06–0024	12/12/07	11/21/07	(G) Aliphatic urethane acrylate oligomer
P–06–0191	12/10/07	11/06/07	(S) Propanamide, 2,2′-azobis[n-(2-hydroxyethyl)-2-methyl-
P–06–0799	12/28/07	12/01/07	(S) Hexanedioic acid, polymer with 2,2-dimethyl-1,3-propanediol, hexahydro-1,3-isobenzofurandione and 1,2-propanediol
P–07–0094	12/27/07	11/27/07	(G) Anthranilate
P–07–0211	12/26/07	12/04/07	(G) Toluene halo alkyl sulfo derivative
P–07–0212	12/26/07	12/05/07	(G) Toluene halo alkyl sulfo derivative
P–07–0213	12/26/07	12/03/07	(G) Toluene halo alkyl sulfo derivative
P–07–0214	12/26/07	11/29/07	(G) Toluene halo alkyl sulfo derivative
P–07–0242	12/11/07	11/19/07	(G) Acrylate siline adduct
P–07–0363	12/20/07	11/27/07	(G) Butylene phthalate(poly-1,3-propyleneoxide) phthalate copolymer
P–07–0424	12/03/07	11/16/07	(G) Acrylic polymer with vinyl acetate and acrylonitrile
P–07–0433	12/17/07	11/27/07	(G) Alkyl heteroaryl chloroaluminate
P–07–0468	12/27/07	11/20/07	(G) Brominated epoxy novolac
P–07–0483	12/11/07	12/04/07	(G) Urethane polymer methacrylate-blocked
P–07–0496	12/19/07	12/05/07	(S) Oxiranemethanamine, *N*-[3-(oxiranylmethoxy)phenyl]-*N*-(oxiranylmethyl)-
P–07–0502	12/17/07	11/21/07	(G) Acrylic styrenic acrylamide polyether ammonium salt polymer
P–07–0509	12/18/07	12/13/07	(G) Reactive cyclodextrin derivative
P–07–0522	12/17/07	11/28/07	(G) Carbon black, (3-methylphenyl)-modified, substituted
P–07–0536	12/14/07	12/03/07	(G) Aromatic hydrogenated poly alkyldiene containing poly alkyl methacrylate
P–07–0541	12/03/07	11/14/07	(G) Polyurethane derivative
P–07–0542	12/04/07	10/31/07	(G) Mixed polyol - gylcerol fatty acid ester
P–07–0570	12/27/07	12/12/07	(G) Modified ethylene-vinyl alcohol (evoh) polymer
P–07–0576	12/20/07	11/23/07	(G) Hexafluoropropylene-perfluoro (alkyl vinyl ether)-tetrafluoroethylene copolymer

II. 51 NOTICES OF COMMENCEMENT FROM: 12/01/07 TO 12/31/07—Continued

Case No.	Received Date	Commencement Notice End Date	Chemical
P–07–0581	12/03/07	11/19/07	(G) Iminodiacetic acid type chelating resin
P–07–0582	12/03/07	11/19/07	(G) Iminodiacetic acid type chelating resin
P–07–0583	12/03/07	11/19/07	(G) Special ligand type ion exchange resin
P–07–0584	12/19/07	11/21/07	(S) 4-hydroxy-3,5-dimethoxybenzamide (syringamide)
P–07–0585	12/19/07	11/21/07	(S) Laccase
P–07–0599	12/20/07	12/06/07	(G) Aromatic acrylate monomer
P–07–0602	12/03/07	11/26/07	(G) 1-alkene, 10,10-diethoxy-
P–07–0604	12/26/07	12/18/07	(G) Poly(oxy-1,2-alkyl), .alpha.-hydro-.omega.-hydroxy-, .alpha.-oxoarylacetate
P–07–0606	12/05/07	11/20/07	(G) Polyol ester
P–07–0614	12/18/07	11/21/07	(G) 2-arylazo-*N*-aryl-3-oxo-alkylamide
P–07–0625	12/20/07	12/03/07	(G) Cyclic amine polymer with epoxides, alkylcarboxy derivs
P–07–0630	11/30/07	11/27/07	(G) Polyester polyether urethane block copolymer
P–07–0637	12/20/07	11/21/07	(G) Aluminum mixed metal and mixed diol complex
P–07–0643	12/27/07	12/12/07	(G) Hydroxyalkyl methacrylate, polymer with branched benzene, alkyl alkenoate and alkyl fumarate
P–07–0645	12/27/07	12/08/07	(G) Hydroxyalkyl methacrylate, polymer with branched benzene, alkyl (C=1-6) methacrylate, alkyl acrylate and alkenoic acid
P–07–0656	12/19/07	12/07/07	(G) Substituted triazine derivative
P–07–0657	12/19/07	12/07/07	(G) Substituted benzimidazol sulfonic acid
P–07–0659	12/19/07	12/07/07	(G) Substituted triazine derivative
P–07–0660	12/19/07	12/07/07	(G) Substituted anthraquinone derivative
P–07–0661	12/19/07	12/07/07	(G) Substituted phthalocyanine
P–07–0670	12/17/07	12/10/07	(G) Butanoic acid, (1r)-1-ethenylalkyl ester
P–07–0671	12/27/07	12/11/07	(G) Polyurethane adhesive
P–07–0699	12/28/07	12/22/07	(G) Acrylics modified chlorinated polypropylene
P–07–0708	12/28/07	12/22/07	(G) Acrylics modified chlorinated polypropylene
P–94–1881	12/12/07	11/01/94	(G) Urethane methacrylate
P–99–0303	11/30/07	11/27/07	(G) *N*-butyl, 2-ethylhexyl acrylate copolymer

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: February 8, 2008.

Chandler Sirmons,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. E8–3110 Filed 2–19–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2008–0102; FRL–8351–8]

Exposure Modeling Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: An Exposure Modeling Public Meeting (EMPM) will be held for one day on March 11, 2008. This notice announces the location and time for the meeting and sets forth the tentative agenda topics.

DATES: The meeting will be held on March 11, 2008 from 9 a.m. to 4 p.m.

To request accommodation of a disability, please contact the person listed under **FOR FURTHER INFORMATON CONTACT**, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

ADDRESSES: The meeting will be held at EPA, Office of Pesticide Programs (OPP), One Potomac Yard (South Bldg.), 1st Floor South Conference Room, 2777 S. Crystal Drive, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Michael Barrett, Environmental Fate and Effects Division (7507P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6391; fax number: (703) 305–6309; e-mail address: *barrett.michael@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are required to conduct testing of chemical substances under the Toxic Substances Control Act (TSCA), the Federal Food, Drug and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have nay questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established a docket for this action under docket ID number EPA–HQ–OPP–2008–0102. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

II. Background

On a triannual interval, an Exposure Modeling Public Meeting will be held for presentation and discussion of current issues in modeling pesticide fate, transport, and exposure in support of risk assessment in a regulatory context. Meeting dates and abstract

requests are announced through the ''empmlist'' forum on the LYRIS list server at *https://lists.epa.gov/read/all_forums/*.

III. How Can I Request to Participate in this Meeting?

You may submit a request to participate in this meeting to the person listed under **FOR FURTHER INFORMATION CONTACT**. Do not submit any information in your request that is considered CBI. Requests to participate in the meeting, identified by docket ID number EPA–HQ–OPP–2008–0102, must be received on or before [*15 days after date of publication in the* **Federal Register**].

IV. Tentative Topics for the Meeting

General Theme: Large-Scale Monitoring for Contaminant Modeling: Strategies, Results, and Future Directions

Specific Topics

Atrazine and Nitrate in Rural Drinking Water Wells

Analysis of Long-Term Trends in Atrazine Occurrence in Raw Water of 103 CWSs

Aldicarb Potable Well Monitoring Program – Study Design, Collection of Ancillary Field Data, and Relevance for Dietary Risk Assessments

Review of Monitoring Drinking Water Data from Surface Waters: Use in Dietary Risk Assessment; Site Selection and Auxilliary Data Collection Issues

Inverse Model for Determining Agricultural Watershed N Balances from Stream Nitrate Data

Implementation of Best Management Practices for Atrazine Herbicide in the Little Arkansas River Watershed

Estimating the Effects of Pesticides on Macroinvertebrate Assemblage Composition Using Field Data

Pathways for Drinking Water Well Contamination

Source Water and Finished Drinking Water Quality

Overview of NAWQA Status and Plans for National Monitoring of Streams and Ground Water

List of Subjects

Environmental protection, Modeling, Monitoring, Pesticides, Pest.

Dated: February 12, 2008.

Donald J. Brady,

Director, Environmental Fate and Effects Division.

[FR Doc. E8–3125 Filed 2–19–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8530–5]

Science Advisory Board Staff Office; Notification of Upcoming Meeting of the Science Advisory Board Ecological Processes and Effects Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA or Agency) Science Advisory Board (SAB) Staff Office announces a public meeting of the SAB Ecological Processes and Effects Committee to provide advice on the EPA Ecological Research Program's Multi-Year Plan.

DATES: The meeting dates are Wednesday, April 9, 2008 from 8:30 a.m. to 5:30 p.m. through Thursday, April 10, 2008 from 8:30 a.m. to 2 p.m. (Eastern Time).

ADDRESSES: The meeting will be held in the SAB Conference Center, located at: 1025 F Street, NW., Room 3705, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Members of the public who wish to obtain further information about this meeting must contact Dr. Thomas Armitage, Designated Federal Officer (DFO). Dr. Armitage may be contacted at the EPA Science Advisory Board (1400F), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; or via telephone/voice mail; (202) 343–9995; fax (202) 233–0643; or e-mail at: *armitage.thomas@epa.gov*. General information about the EPA SAB, as well as any updates concerning the meeting announced in this notice, may be found on the SAB Web site at: *http://www.epa.gov/sab*.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the SAB Ecological Processes and Effects Committee will hold a public meeting to provide advice on the EPA Ecological Research Program's Multi-Year Plan and discuss other Committee business. The SAB was established by 42 U.S.C. 4365 to provide independent scientific and technical advice to the Administrator on the technical basis for Agency positions and regulations. The SAB is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Background: The EPA Office of Research and Development has developed a draft Ecological Research Program Multi-Year Plan that establishes long-term and annual goals for the Agency's Ecological Research Program and discusses planned research. The Multi-Year Plan describes a new direction for the Ecological Research Program intended to fill the need for a better understanding of the implications of human impacts on ecosystems and the services they provide. The redirected Ecological Research Program builds on past research efforts in ecosystem monitoring, restoration, and functioning to develop operational methods for incorporating quantitative information on ecosystem services into decision making.

EPA's Office of Research and Development has requested that the SAB provide advice on the program focus, research questions, and implementation approach articulated in the Agency's draft Ecological Research Program Multi-Year Plan. The SAB has been asked to comment on: (1) The utility of the program in offering meaningful contributions to ecological sciences and providing useful information for decision making, (2) the adequacy of the proposed goals, objectives, and research questions in meeting the overall purpose of the program, (3) the proposed implementation approach, (4) anticipated challenges to achieving the overall goal of the program, and (5) ways to measure the progress, productivity, efficiency, and effectiveness of the program.

To augment the expertise on the SAB Ecological Processes and Effects Committee, the SAB Staff Office has selected several SAB committee members with expertise in valuing ecosystem services to participate in this advisory activity. The roster and biosketches of members of the Ecological Processes and Effects Committee augmented for the advisory on EPA's Ecological Research Program are posted on the SAB Web site at: *http://www.epa.gov/sab*.

Availability of Meeting Materials: The draft Ecological Research Program Multi-Year Plan to be reviewed by the SAB Committee will be posted on the EPA Office of Research and Development SAB Web site at: *http://www.epa.gov/ord/htm/multi-yearplans.htm*. The EPA technical contact for the Ecological Research Program Multi-Year Plan is Dr. Rick Linthurst, EPA Office of Research and Development. Dr. Linthurst may be contacted by telephone at (919) 541–

4909, or via e-mail at: *linthurst.rick@epa.gov*. The agenda and other material for the upcoming public meeting will be posted on the SAB Web site at: *http://www.epa.gov/sab*.

Procedures for Providing Public Input: Interested members of the public may submit relevant written or oral information for the SAB Panel to consider on the topics included in this advisory activity and/or group conducting the activity. *Oral Statements:* In general, individuals or groups requesting an oral presentation at a public meeting will be limited to five minutes per speaker, with no more than a total of one hour for all speakers. Interested parties should contact Dr. Armitage, DFO, in writing (preferably via e-mail) at the contact information noted above, by April 2, 2008 be placed on a list of public speakers for the meeting. *Written Statements:* Written statements should be received in the SAB Staff Office by March 12, 2008 so that the information may be made available to the SAB Panel members for their consideration. Written statements should be supplied to the DFO in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat PDF, WordPerfect, MS Word, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format).

Accessibility: For information on access or services for individuals with disabilities, please contact Dr. Armitage at the phone number or e-mail address noted above, preferably at least ten days prior to the meeting to give EPA as much time as possible to process your request.

Dated: February 12, 2008.

Anthony F. Maciorowski,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. E8–3115 Filed 2–19–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2005–0061; FRL–8349–8]

Azinphos-methyl; Product Cancellation Order and Amendments to Terminate Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice publishes EPA's order for the cancellations and amendments to terminate uses, voluntarily requested by the registrants and accepted by the Agency, of products containing the pesticide azinphos-methyl (AZM), pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. This cancellation order follows an August 8, 2007 **Federal Register** Notice of Receipt of Requests from the AZM registrants to voluntarily cancel and amend to terminate uses of all their AZM product registrations by September 30, 2012. Subject to the terms and conditions described in Unit II below and except as provided in the existing stocks provisions of the cancellation order, the order terminates distribution, sale and use of AZM products labeled for use on Brussels sprouts and nursery stock effective as of today's date; and prohibits use of such products on Brussels spouts and nursery stock effective September 30, 2008; terminates AZM use on walnuts, almonds, and pistachios effective October 30, 2009; and cancels all AZM products effective September 30, 2012. The cancellation of AZM products serves to terminate the six remaining uses of AZM (apples, pears, cherries, blueberries, alkali bee beds, and parsley) on September 30, 2012. All distribution, sale and use of such products will be prohibited as of that date except as provided in the existing stocks order of the notice. While the alkali bee bed use was not specifically identified in the registrants' voluntary cancellation requests, the registrants requested cancellation of all AZM products, which includes products labeled for the bee bed use. These are the last AZM products registered for use in the United States. In the August 8, 2007 notice, EPA indicated that it would issue an order implementing the cancellations and amendments to terminate uses, unless the Agency received substantive comments within the 30–day comment period that would merit its further review of these requests. The Agency did not receive any comments on the notice. Accordingly, EPA hereby issues in this notice a cancellation order granting the requested cancellations and amendments to terminate uses. Any distribution, sale, or use of the AZM products subject to this cancellation order is permitted only in accordance with the terms of this order, including any existing stocks provisions.

DATES: This order is February 20, 2008.

FOR FURTHER INFORMATION CONTACT: Tom Myers, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8589; fax number: (703) 308–7070; e-mail address: *myers.tom@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, 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 applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2005–0061. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

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 Action is the Agency Taking?

This notice announces the cancellation and amendments to terminate uses, as requested by registrants, of all end-use and manufacturing-use AZM products registered under section 3 and 24(c) of FIFRA. At the request of EPA, the AZM registrants requested that EPA terminate certain uses in 2007 and 2009 and cancel all remaining AZM product registrations in 2012 (identified in Table 1 of this notice), subject to certain terms and conditions. Specifically they requested the deletion of the Brussels sprouts and nursery stock uses from their registrations not sooner than the later of September 30, 2007 or 90 days from the date EPA approves draft

labeling submitted by the registrants (draft labeling was approved on August 14, 2007); deletion of the walnut, almond, and pistachio uses not sooner than October 30, 2009; and the cancellation of all AZM registrations (thereby ending AZM use on apples, pears, cherries, blueberries, alkali bee beds, and parsley) not sooner than September 30, 2012. Other terms and conditions include:

1. A condition that the requests for termination of use and voluntary cancellation shall not be made effective until EPA conducts an independent scientific review of a submission from the registrants requesting reconsideration of EPA's decision to maintain an inter-species uncertainty factor in its risk assessment of AZM for agricultural workers. EPA has conducted this review and provided its response to the registrants.

2. A condition that the requests for voluntary cancellation of all AZM products shall not become effective unless:

i. EPA holds at least one public meeting to obtain views regarding the continued need for access to AZM prior to July 1, 2011 (EPA has thus far held a series of public meetings under the auspices of the Pesticide Program Dialogue Committee regarding the need for AZM and issues related to the transition to alternatives); and

ii. EPA makes a determination not later than November 1, 2011 for the remaining uses of AZM whether to conduct a risk-benefit analysis for AZM prior to the cancellation of these uses, and, if it so determines, conducts such analysis not later than July 1, 2012.

If the actions described above result in the retention of any AZM use beyond the stop-use date (as provided in the existing stock provisions below and in appendix A of the November 16, 2006 Final Decisions for the Remaining Uses for Azinphos-methyl), the registrants may request that product labeling be amended consistent with the terms of such actions and EPA shall grant any amendment that is consistent with such actions and the provisions of 40 CFR part 156.

Affected registrations are listed in sequence by registration number in Table 1 of this unit. EPA believes this is the complete list of all such products; however, because the registrants requested cancellation of all AZM products, the cancellation order and amendment to terminate uses extend to all AZM products held by these registrants irrespective of whether the products are specifically listed in the tables below.

TABLE 1.—AZM PRODUCT CANCELLATIONS

EPA Registration Number	Product Name
264-722	Guthion Solupak 50% Wettable Powder in Water Soluble Packets
264-733	Guthion Solupak 50% Wettable Powder Insecticide
10163-78	Gowan Azinphos-M 50 WSB
10163-95	Azinphos-methyl Technical
11678-53	Cotnion-Methyl
66222-11	Cotnion-Methyl Azinphos-methyl 50W
66330-233	Azinphos-methyl 50W
ID000006	Guthion Solupak 50% Wettable Powder Insecticide
NJ990010	Guthion Solupak 50% Wettable Powder Insecticide
OH020005	Guthion Solupak 50% Wettable Powder Insecticide
OR040020	Guthion Solupak 50% Wettable Powder Insecticide
TX030011	Guthion Solupak 50% Wettable Powder Insecticide
WA000001	Guthion Solupak 50% Wettable Powder Insecticide
WA030035	Guthion Solupak 50% Wettable Powder Insecticide

Table 2 of this unit includes the names and addresses of record for all registrants of the products in Table 1 of this unit, in sequence by EPA company number. Please note, Guthion Technical Insecticide (264-722) was transferred to Makhteshim Chemical Works LTD (11678-70) in October 2007, and Guthion Solupak 50% Wettable Powder Insecticide (264-733) was transferred to Makteshim-Agan of North America (66222-162) in October 2007. In addition, the following Special Local Need registrations will be cancelled immediately upon publication of this notice: ID000006, NJ990010, OH020005, TX030011, and WA000001. Special Local Need registrations OR040020 and WA030035 (both registered only for alkali bee bed use) are subject to existing stocks provisions as listed in Unit IV.2. of this notice.

TABLE 2.—REGISTRANTS OF CANCELLED AND/OR AMENDED AZM PRODUCTS

EPA Company Number	Company Name and Address
264	Bayer Crop Science P.O. Box 12014 2 T.W. Alexander Drive Research Triangle Park, NC 27709
11678	Makteshim Chemical Works LTD c/o Makteshim Agan of North America 4515 Falls of Neuse RD STE 300 Raleigh, NC 27609
66222	Makteshim-Agan of North America 4515 Falls of Neuse RD STE 300 Raleigh, NC 27609
10163	Gowan Company PO Box 5569 Yuma, AZ 85366-5569
66330	Arysta Lifescience North America Corporation 15401 Weston Parkway, Suite 150 Cary, NC 27513

III. Summary of Public Comments Received and Agency Response to Comments

During the public comment period provided, EPA received no comments in response to the August 8, 2007 **Federal Register** notice (72 FR 44511) (FRL–8134–7) announcing the Agency's receipt of the requests for voluntary cancellations and amendments to terminate uses of AZM.

IV. Cancellation Order

1. *Cancellation and amendment.* Pursuant to FIFRA section 6(f), EPA hereby approves the requested cancellations and amendments to terminate uses of AZM registrations identified in Table 1 of Unit II. and any other AZM product that may be held by the registrants listed in Table 2 of Unit II. Accordingly, subject to the terms and conditions described in Unit II. of this notice, the Agency orders that these AZM product registrations are hereby canceled and amended as follows:

i. Use of AZM products on Brussels sprouts and nursery stock is prohibted as of September 30, 2008.

ii. Use of AZM products on walnuts, almonds, and pistachios is prohibited effective October 30, 2009

iii. All AZM products currently held by any of the registrants listed in Table 2 of Unit II are canceled effective September 30, 2012. Any distribution, sale, or use of these products in a manner inconsistent with this order, including the provisions in Unit IV.2 regarding the disposition of existing stocks, will be considered a violation of section 12(a)(2)(K) and/or 12(a)(1)(A) of FIFRA.

2. *Existing Stocks*. For purposes of this order, the term ''existing stocks'' is defined, pursuant to EPA's existing stocks policy (56 FR 29362, June 26, 1991) as those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the amendment or cancellation action. This cancellation order includes the following existing stocks provisions.

a. *Distribution or sale*. i. Distribution or sale of products bearing the Brussels sprouts and nursery stock uses is prohibited effective as of February 20, 2008, except for the purposes of proper disposal, reformulation, relabeling, or export consistent with section 17 of FIFRA, which activities may continue until such stocks are depleted.

ii. Distribution or sale of Special Local Need registrations OR040020 and WA030035 bearing the alkali bee beds use is prohibited after December 31, 2010 except the sale or distribution of such products for the purposes of proper disposal, reformulation, relabeling, or export consistent with section 17 of FIFRA, which activities may continue until such stocks are depleted.

iii. For products bearing all other uses, distribution or sale of such products is prohibited after September 30, 2012 except the sale or distribution of such products for the purposes of proper disposal, reformulation, relabeling, or export consistent with section 17 of FIFRA, which activities may continue until such stocks are depleted.

b. *Use*. i. Use of products on Brussels sprouts and nursery stock is prohibited as of February 20, 2008. Labels prohibit use on almonds, walnuts, and pistachios after October 30, 2009.

ii. Use of all azinphos methyl products subject to this notice for any use is prohibited after September 30, 2012.

Note that the stop use dates for the uses are also reflected on amended product labeling. Any use of existing stocks must be consistent with the directions for use on product labeling.

V. What is the Agency's Authority for Taking this Action?

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 canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the Federal Register. Thereafter, following the public comment period, the Administrator may approve such a request.

List of Subjects

Environmental protection, Pesticides and pests.

Dated:February 12, 2008.

Steven Bradbury,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E8–3112 Filed 2–19–08; 8:45 a.m.]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

February 6, 2008.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. An agency may not conduct or sponsor a collection of information unless it displays a currently valid 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 (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments by April 21, 2008. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), (202) 395–5887, or via fax at 202–395–5167, or via the Internet at *Nicholas_A._Fraser@omb.eop.gov* and to *Judith-B.Herman@fcc.gov,* Federal Communications Commission (FCC). To submit your comments by e-mail send them to: *PRA@fcc.gov.*

To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called ''Currently Under Review'', (3) click the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box and (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

FOR FURTHER INFORMATION CONTACT: For additional information, send an e-mail to Judith B. Herman at 202–418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0290.

Title: Section 90.517, Report of Operation Under Developmental Authorization.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 10 respondents; 10 responses.

Estimated Time per Response: 2 hours.

Frequency of Response: On occasion reporting requirement.

Obligation To Respond: Required to obtain or retain benefits.

Total Annual Burden: 20 hours.

Annual Cost Burden: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: This collection will be submitted as an extension (no change in reporting requirements) after this 60 day comment period to Office of Management and Budget (OMB) in order to obtain the full three year clearance.

A report on the results of a developmental program shall be filed with and made a part of each application for renewal of authorization. In cases where no renewal is requested, such report shall be filed within 60 days of the expiration of such authorization. Matters which the applicant does not wish to disclose publicly may be so labeled; they will be used solely for the Commission's information, and will not be publicly disclosed without the permission of the applicant. The report shall include comprehensive and detailed information on: (1) The final objective; (2) results of operation to date; (3) analysis of the results obtained; (4) copies of any published reports; (5) need for continuation of the program; and (6) number of hours of operation on each frequency.

This report is not required if the sole reason for the developmental authorization is that the frequency of operation is restricted to developmental use only. Commission personnel use the data to evaluate the need for renewal of the applicant's authorization. This information is also used by policy-making staff to decide the desirability of instituting rulemaking proceedings involving new technologies or new uses of the radio spectrum.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–3155 Filed 2–19–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to OMB for Review and Approval, Comments Requested

February 12, 2008.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid 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 (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before March 21, 2008. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via Internet at *Nicholas_A._Fraser@omb.eop.gov* or via fax at (202) 395–5167 and to Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW, Washington, DC or via Internet at *Cathy.Williams@fcc.gov.*

To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB control number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0016.

Title: Application for Authority to Construct or Make Changes in a Low Power TV, TV Translator, or TV Booster Station.

Form Number: FCC Form 346.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions; State, local or tribal government.

Number of Respondents: 3,500.

Estimated Time per Response: 7 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Total Annual Burden: 24,500 hours.

Total Annual Costs: $10,493,000.

Nature of Response: Required to obtain or retain benefits.

Confidentiality: No need for confidentiality required.

Privacy Impact Assessment: No impact(s).

Needs and Uses: Licensees/permittees/applicants use FCC Form 346 to apply for authority to construct or make changes in a Low Power Television, TV Translator, or TV Booster broadcast station. On September 9, 2004, the Commission adopted a Report and Order, FCC 04–220, MB Docket Number 03–185, In the Matter of Parts 73 and 74 of the Commission's Rules to Established Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations. To implement the new rules, the Commission revised FCC Form 346 to allow licensees/permittees/applicants to use the revised FCC Form 346 to file for digital stations or for conversion of existing analog to digital.

Applicants are also subject to the third party disclosure requirements under 47 CFR 73.3580. Within 30 days of tendering the application, the applicant is required to publish a notice in a newspaper of general circulation when filing all applications for new or major changes in facilities. The notice is to appear at least twice a week for two consecutive weeks in a three-week period. A copy of this notice must be maintained with the application. FCC staff use the data to determine if the applicant is qualified, meets basic statutory and treaty requirements, and will not cause interference to other authorized broadcast services.

OMB Control Number: 3060–0667.

Title: Section 76.630, Compatibility with Consumer Electronic Equipment; Section 76.1621, Equipment Compatibility Offer; Section 76.1622, Consumer Education of Equipment Compatibility.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 8,250.

Estimated Hours per Response: 1–3 hours.

Frequency of Response: Recordkeeping requirement; On occasion reporting requirement; Third party disclosure requirement.

Total Annual Burden: 266,515 hours.

Total Annual Cost: $5,800.

Privacy Impact Assessment: No impact(s).

Nature of Response: Required to obtain or retain benefits.

Confidentiality: No need for confidentiality required.

Needs and Uses: 47 CFR 76.630(a) states a cable system operator shall not scramble or otherwise encrypt signals carried on the basic service tier. Requests for waivers of this prohibition must demonstrate either a substantial problem with theft of basic tier service or a strong need to scramble basic signals for other reasons. As part of this showing, cable operators are required to notify subscribers by mail of waiver requests. The notice to subscribers must be mailed no later than thirty calendar days from the date the request waiver was filed with the Commission, and cable operators must inform the Commission in writing, as soon as possible, of that notification date. The notification to subscribers must state:

On (date of waiver request was filed with the Commission), (cable operator's name) filed with the Federal Communications Commission a request for waiver of the rule prohibiting scrambling of channels on the basic tier of service. 47 CFR 76.630(a). The request for waiver states (a brief summary of the waiver request). A copy of the request for waiver is on file for public inspection at (the address of the cable operator's local place of business).

Individuals who wish to comment on this request for waiver should mail comments to the Federal Communications Commission by no later than 30 days from (the date the notification was mailed to subscribers). Those comments should be addressed to the: Federal Communications Commission, Media Bureau, Washington, DC 20554, and should include the name of the cable operator to whom the comments are applicable. Individuals should also send a copy of their comments to (the cable operator at its local place of business). Cable operators may file comments in reply no later than 7 days from the date subscriber comments must be filed. 47 CFR 76.1621 states a cable system operators that use scrambling, encryption or similar technologies in conjunction with cable system terminal devices, as defined in § 15.3(e) of this chapter, that may affect subscribers' reception of signals shall offer to supply each subscriber with special equipment that will enable the simultaneous reception of multiple signals. The equipment offered shall include a single terminal device with dual descramblers/decoders and/or timers and bypass switches. Other equipment, such as two independent set-top terminal devices may be offered at the same time that the single terminal device with dual tuners/descramblers is offered.

For purposes of this rule, two set-top devices linked by a control system that provides functionality equivalent to that of a single device with dual descramblers is considered to be the same as a terminal device with dual descramblers/decoders.

(a) The offer of special equipment shall be made to new subscribers at the time they subscribe and to all subscribers at least once each year.

(b) Such special equipment shall, at a minimum, have the capability:

(1) To allow simultaneous reception of any two scrambled or encrypted signals and to provide for tuning to alternative channels on a pre-programmed schedule; and

(2) To allow direct reception of all other signals that do not need to be processed through descrambling or decryption circuitry (this capability can generally be provided through a separate by-pass switch or through internal by-pass circuitry in a cable system terminal device).

(c) Cable system operators shall determine the specific equipment needed by individual subscribers on a case-by-case basis, in consultation with the subscriber. Cable system operators are required to make a good faith effort to provide subscribers with the amount and types of special equipment needed to resolve their individual compatibility problems.

(d) Cable operators shall provide such equipment at the request of individual subscribers and may charge for purchase or lease of the equipment and its installation in accordance with the provisions of the rate regulation rules for customer premises equipment used to receive the basic service tier, as set forth in § 76.923. Notwithstanding the required annual offering, cable operators shall respond to subscriber requests for special equipment for reception of multiple signals that are made at any time.

47 CFR 76.1622 states that Cable system operators shall provide a consumer education program on compatibility matters to their subscribers in writing, as follows:

(a) The consumer information program shall be provided to subscribers at the time they first subscribe and at least once a year thereafter. Cable operators may choose the time and means by which they comply with the annual consumer information requirement. This requirement may be satisfied by a once-a-year mailing to all subscribers. The information may be included in one of the cable system's regular subscriber billings.

(b) The consumer information program shall include the following information:

(1) Cable system operators shall inform their subscribers that some models of TV receivers and videocassette recorders may not be able to receive all of the channels offered by the cable system when connected directly to the cable system. In conjunction with this information, cable system operators shall briefly explain, the types of channel compatibility problems that could occur if subscribers connected their equipment directly to the cable system and offer suggestions for resolving those problems. Such suggestions could include, for example, the use of a cable system terminal device such as a set-top channel converter. Cable system operators shall also indicate that channel compatibility problems associated with reception of programming that is not scrambled or encrypted programming could be resolved through use of simple converter devices without descrambling or decryption capabilities that can be obtained from either the cable system or a third party retail vendor.

(2) In cases where service is received through a cable system terminal device, cable system operators shall indicate that subscribers may not be able to use special features and functions of their TV receivers and videocassette recorders, including features that allow the subscriber to: view a program on one channel while simultaneously recording a program on another channel; record two or more consecutive programs that appear on different channels; and, use advanced picture generation and display features such as ''Picture-in-Picture,'' channel review and other functions that necessitate channel selection by the consumer device.

(3) In cases where cable system operators offer remote control capability with cable system terminal devices and other customer premises equipment that is provided to subscribers, they shall advise their subscribers that remote control units that are compatible with that equipment may be obtained from other sources, such as retail outlets.

Cable system operators shall also provide a representative list of the models of remote control units currently available from retailers that are compatible with the customer premises equipment they employ. Cable system operators are required to make a good faith effort in compiling this list and will not be liable for inadvertent omissions. This list shall be current as of no more than six months before the date the consumer education program is distributed to subscribers. Cable operators are also required to encourage subscribers to contact the cable operator to inquire about whether a particular remote control unit the subscriber might be considering for purchase would be compatible with the subscriber's customer premises equipment.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–3160 Filed 2–19–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2850]

Petitions for Reconsideration of Action in Rulemaking Proceeding

February 12, 2008.

Petitions for Reconsideration have been filed in the Commission's Rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents is available for viewing and copying in Room CY–B402, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160). Oppositions to these petitions must be filed by March 6, 2008. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1). Replies to oppositions must be filed within 10 days after the time for filing oppositions have expired.

Subject: In the Matter of Exclusive Service Contracts for Provision of Video Services in Multiple Dwelling Units and Other Real Estate Developments (MB Docket No. 07–51).

Number of Petitions Filed: 1.

Subject: In the Matter of Implementation of the Cable Television Consumer Protection and Competition Act of 1992 (MB Docket No. 07–29).

Development of Competition and Diversity in Video Programming Distribution: Section 628(c)(5) of the Communications Act.

Sunset of Exclusive Contract Prohibition.

Number of Petitions Filed: 1.

Marlene H. Dortch,

Deputy Secretary.

[FR Doc. E8–3137 Filed 2–19–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 17, 2008.

A. Federal Reserve Bank of Atlanta (David Tatum, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. Summit Financial Enterprises, Inc., to become a bank holding company by acquiring 100 percent of the voting shares of Summit Bank, N.A., both of Panama City, Florida (in organization).

Board of Governors of the Federal Reserve System, February 14, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–3075 Filed 2–19–08; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–New]

Agency Information Collection Request. 60-Day Public Comment Request

AGENCY: Office of the Secretary, DOD.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above email address within 60-days.

Proposed Project—Evaluation of Healthy People 2010 Users—NEW—Office of Disease Prevention and Health Promotion (ODPHP).

Abstract: Office of the Assistant Secretary for Planning and Evaluation (ASPE), Office of Disease Prevention and Health Promotion (ODPHP) is seeking OMB approval to conduct a short survey using a self-administered questionnaire of state, local, and tribal health organizations. The survey will be administered through mail and

respondents will have the option to complete the survey as a web-based electronic survey. Healthy People 2010 (HP2010) is an important Federal initiative that establishes national health promotion and disease prevention goals. HP2010 represents the third of a series of publications by HHS that specifies ten-year health objectives for the nation. Its overarching goals are to increase the quality and years of healthy life and eliminate health disparities.

HP2010 consists of 28 primary focus areas and 467 measurable health objectives designed to identify the most significant preventable threats to health and to establish public health priorities. The central theme of HP2010 focuses on the role of communities and community partnerships in promoting healthy living in the U.S. HP2010 is a powerful force in the effort to promote health and prevent disease in the U.S. The agenda reflects extensive consultation with over 350 national organizations, 250 state agencies, health experts, and the public.

HHS is eager to document the utilization of HP2010, and to seek input from key users on how the next iteration of the initiative, Healthy People 2020, could be improved to encourage greater involvement. This study will identify examples of effective strategies and approaches to using HP2010, and, where possible, the short-term results of those efforts.

ESTIMATED ANNUALIZED BURDEN TABLE

Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hrs)	Total burden hours
State Healthy People Coordinators (Frame A)	51	1	15/60	13
State Chronic Disease Program Directors (Frame A)	51	1	15/60	13
Local Health Organizations (Frame B)	300	1	15/60	75
Tribal Health Organizations (Frame C)	100	1	15/60	25
Total	502			126

Dated: February 6, 2008.

Terry Nicolosi,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E8–3102 Filed 2–19–08; 8:45 am]

BILLING CODE 4150–32–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: *Technical Assistance for Health IT and Health Information Exchange in Medicaid and SCHIP*. In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), AHRQ invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by April 21, 2008.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by e-mail at doris.*lefkowitz@ahrq.hhs.gov*.

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by e-mail at *doris.lefkowitz@ahrq.hhs.gov*

SUPPLEMENTARY INFORMATION:

Proposed Project

''Technical Assistance for Health IT and Health Information Exchange in Medicaid and SCHIP''

AHRQ proposed a three year project to (1) assess the challenges facing Medicaid and State Children's Health Insurance Programs (SCHIP) agencies nationwide as they plan and implement health information technology (health IT) and health information exchange (HIE) programs and (2) provide the agencies with technical assistance to help them overcome these challenges. Health IT refers to the set of electronic tools and methods used for managing information about the health and health care of individuals, groups of individuals, and communities. HIE refers to organized efforts at the local, state, or regional levels to establish the necessary policy, business, operating, and technical mechanisms and structures that allow, support, and promote the exchange of health care information electronically across organizations. Health IT and HIE hold great promise for improving the quality and efficiency of health care in the United States. Medicaid and SCHIP agencies, which receive federal and state funding, serve the most medically and financially vulnerable populations. More than sixty percent of Medicaid beneficiaries have one or more chronic or disabling diseases. In addition, Medicaid and SCHIP beneficiaries frequently experience gaps in eligibility for benefits that cause beneficiaries to seek care from multiple settings, which compromises the accuracy and completeness of their health care records. These populations have much to gain from the coordination of care that can be realized from the adoption of health IT and HIE. Furthermore, as the largest health care purchaser in the United States, Medicaid can influence the adoption of health IT and HIE by providers of care. However, Medicaid and SCHIP agencies face considerable challenges in the implementation of health IT and HIE (Alfreds ST, Tutty M, Savageau JA, Young S. Himmelstein J (2006–2007). ''Clinical Health Information Technologies and the Role of Medicaid.'' *Health Care Financing Review* Vol. 28, No. 2, pp. 11–20.).

A needs assessment of the Medicaid and SCHIP agencies in all fifty six states and territories, including the District of Columbia, will be conducted to gauge the need for technical assistance. The needs assessment will be updated in the second year of the project to assure that the program of technical assistance that is developed will be of maximum utility to the Medicaid and SCHIP agencies.

AHRQ will develop and provide a wide range of technical assistance

through workshops and web-based seminars to assist Medicaid and SCHIP agencies to adopt, implement and evaluate health IT and HIE to improve the quality of care for Medicaid and SCHIP beneficiaries. Based on the results of the needs assessment, workshops and web-based seminars, AHRQ will develop additional tools and resources, such as printed technical materials, to further facilitate the adoption of health IT and HIE among Medicaid and SCHIP agencies.

Method of Collection

The needs assessments will be conducted by telephone or in-person interviews with the directors of each Medicaid and SCHIP agency or with the persons designated by the director as most knowledgeable about their IT systems and planned or current health IT or HIE programs. The content of the needs assessment will be the same whether it is conducted by telephone or in person, and will be pre-populated to the extent possible with information gathered from other sources to reduce the burden on respondents, who can then simply verify that the information is correct. Workshop and seminar participants will be asked to complete a short evaluation of the material presented.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden for this three-year project. The needs assessment will be conducted with an average of thirty agencies per year and will require approximately four hours and ten minutes per agency. Approximately seven workshops will be conducted each year with five agencies participating in each. The workshop evaluations will take approximately fifty minutes to complete. An average of ten web-based seminars will be conducted each year with twenty-five agencies participating in each. The seminar evaluations will take approximately twenty-five minutes to complete. The total annual burden for the respondents to provide the requested information is 260 hours.

Exhibit 2 shows the estimated annualized cost burden to the respondents for their time to provide the requested information. The total annualized cost burden is estimated to be $10,506.

EXHIBIT 1.—ESTIMATED ANNUALIZED BURDEN

Data collection	Number of respondents (agencies)	Number of responses per respondent	Average burden hours per response	Total burden hours
Needs Assessment	30	1	410/60	125
Workshop evaluations	5	7	50/60	30
Web-based seminar evaluations	25	10	25/60	105
Total	60	na	na	260

EXHIBIT 2.—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of respondents (agencies)	Total burden hours	Hourly wage rate	Total cost burden
Needs Assessment	30	125	40.41	$5,051
Workshop evaluations	5	30	40.41	1,212
Web-based seminar evaluations	25	105	40.41	4,243
Total	60	260	.....	10,506

* Based upon the mean hourly wage estimate for NAICS 999000—Federal, State, and Local Government (OES designation) occupation 11–1021 General and Operations Managers, Department of Labor, Bureau of Labor Statistics.

Estimated Annual Costs to the Federal Government

The projected total cost to the Federal Government for this project is $2,990,592 over a three-year period. The projected annual average cost is $996,864. The projected annual cost to design and implement the needs assessment is $180,799. The projected annual cost to develop and implement with workshops is $271,254. The projected annual cost to develop and implement the seminars is $98,187. The projected annual cost to analyze the data and report findings is $132,005. The projected annual administrative cost is $41,973, and the projected annual cost for other technical assistance support is $272,645.

Request for Comments

In accordance with the above-cited Paperwork Reduction Act legislation, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) 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 to be collected; and (d) ways to minimize the burden of the collection of information on he respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: February 8, 2008.

Carolyn M. Clancy, MD

Director

[FR Doc. 08–737 Filed 2–19–08; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) allow information collection related to implementation of the Patient Safety and Quality Improvement Act of 2005, 42 U.S.C. 299b–21 to 299b–26, in: ''Patient Safety Organization Certification and Related Forms and a Patient Safety Confidentiality Complaint Form.'' In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), AHRQ invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by April 21, 2008.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, 540 Gaither Road, Room #5036; Rockville, MD 20850, or by e-mail at *doris.lefkowitz@ahrq.hhs.gov*.

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from AHRQ's Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ, Reports Clearance Officer, (301) 427–1477.

SUPPLEMENTARY INFORMATION: ''Patient Safety Organization Certification and Related Forms and a Patient Safety Confidentiality Complaint Form.''

The Department of Health and Human Services (HHS) Agency for Healthcare Research and Quality (AHRQ) has been delegated the authority to implement the provisions of the Patient Safety and Quality Improvement Act of 2005 (for brevity referenced here as the Patient Safety Act) that call for submission to the Secretary of certifications by entities seeking to become listed by the Secretary as Patient Safety Organizations (PSOs). These entities must certify that they meet or will meet specified statutory criteria and requirements for PSOs.

The HHS Office for Civil Rights (OCR) has been delegated the authority to enforce the provisions of the Patient Safety Act that mandate confidentiality of ''*patient safety work product*.'' This term is defined in the statute, at 42 U.S.C. 299b–21(7), and further explained in the related Notice of Proposed Rulemaking published in the **Federal Register** on February 12, 2008, 73 FR 8112–8183. Individuals may voluntarily submit complaints to OCR if they believe that an individual or organization in possession of *patient safety work product* unlawfully disclosed it.

Methods of Collection

While there are a number of information collection forms described below, they will be implemented at different times, some near the end of the three-year approval period for these standard forms. The forms for certifications of information will collect only the minimum amount of information from entities necessary for the Secretary to determine compliance with statutory requirements for PSOs, i.e., each of the required certification forms will consist of short attestations followed by ''yes'' and''no'' checkboxes to be checked and initiated.

Initial PSO Certification and PSO Recertification Forms

The Patient Safety Act, in 42 U.S.C. 299b–24(a) and the proposed rule in 45 CFR 3.102 provide that an entity may seek an initial three-year listing as a PSO by submitting an initial certification that it has policies and procedures in place to perform eight patient safety activities (enumerated in the statute and the proposed regulation), and that it will comply, upon listing, with seven other statutory criteria. The draft initial certification form also includes four questions related to other requirements for listing related to eligibility and pertinent organizational history. Similarly, the proposed certification form for continued listing as a PSO (for each successive three-year period after the initial listing period) would require certifications that the PSO is performing, and will continue to perform, the eight patient safety activities, and is complying with, and will continue to comply with, the seven statutory criteria. The average annual burden in the first three years of 17 hours per year for the collection of information requested by the certification forms for initial and continued listing is based upon a total average estimate of 33 respondents per year and an estimated time of 30 minutes per response. Information collection, i.e., collection of initial certification forms, will begin as soon as the forms are approved for use. Collection of forms for continued listing will not begin until several months before a date that is three years after the first PSOs are listed by the Secretary. (See *Note* after Exhibit 1.)

Two-Contract Certification

To implement 42 U.S.C. 299b–24(b)(1)(C), AHRQ plans to adopt the following procedure, published in the proposed regulation: In order to maintain its PSO listing, a PSO will be required only to submit a brief attestation, at least once in every 24-month period after its initial date of listing, indicating that it has entered into contracts with two providers. The annualized burden of 8 hours for the collection of information requested by the two-contract requirement is based upon an estimate of 33 respondents per year and an estimated 15 minutes per response. This collection of information will begin when the first PSO timely notifies the Secretary that it has entered into two contracts.

Disclosure Form

The Patient Safety statute at 42 U.S.C. 299b–24(b)(1)(E) requires a PSO to fully disclose information to the Secretary if the PSO has additional financial, contractual, or reporting relationships with any provider to which the PSO provides services pursuant to the Patient Safety Act under contract or if the PSO is managed or controlled by, or is not operated independently from, any of its contracting providers. Disclosure forms will be collected only when a PSO has such relationships with a contracting provider to report. The Secretary is required to review each disclosure statement and make public findings as to whether a PSO can fairly and accurately carry out its responsibilities. AHRQ assumes that only a small percentage of entities will need to file such disclosure forms. However, AHRQ is providing a high estimate of 17 respondents annually and thus presumably overestimating respondent burden. In summary, the annual burden of 8 hours for the collection of information requested by the disclosure form is based upon the high estimate of 17 respondents per year and an estimated 30 minutes per response. This information collection will begin when PSO first reports having any of the specified types of additional relationships with a health care provider with which it has a contract to carry out patient safety activities.

PSO Information Form

Annual completion of a PSO information form will be voluntary and will provide information to HHS on the type of healthcare settings that PSOs are working with to carry out patient safety activities. This form is designed to collect a minimum amount of data in order to gather aggregate statistics on the reach of the Patient Safety Act with respect to types of institutions participating and their general location in the United States. This information will be included in AHRQ's annual quality report, as required under Section 923(c) of the Patient Safety Act. No PSO-specific data will be released without PSO consent. The overall annual burden estimate of 17 hours for the collection of information requested by the PSO Information Form is based upon an estimate of 33 respondents per year and an estimated 30 minutes per response. This information collection will begin toward the end of the calendar year in which the first PSOs are listed by the Secretary.

OCR Complaint Form

The complaint form will collect from individuals only the minimum amount of information necessary for OCR to process and assess incoming complaints. The overall annual burden estimate of 17 hours for the collection of information requested by the underlying form is based upon an estimate of 50 respondents per year and an estimated 20 minutes per response. OCR's information collection using this form will not begin until after there is at least one PSO receiving and generating *patient safety work product* and there is an allegation of a violation of the statutory protection of *patient safety work product*.

All Administrative Forms

The overall maximum anticipated annual burden estimate is 75 hours for all the above-described collections of information. Because the forms filled out by PSOs vary over each of their first three years, the table below includes three-year total estimates divided by three to arrive at an annual estimate of burden hours. (See below.)

EXHIBIT 1.—ESTIMATED ANNUALIZED BURDEN HOURS

Form	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Patient Safety Organization Certification Form	100/3	1	30/60	17
Recertification Form*	50/3	1	30/60	8
Disclosure Form	50/3	1	30/60	8
Two-Contract Requirement Form**	100/3	1	15/60	8
Information Form***	100/3	1	30/60	17
Patient Safety Confidentiality Complaint Form	150/3	1	20/60	17
Total****	500/3	na	na	75

Note: * The Recertification Form will be completed by any interested PSO at least 45 days before the end of its current three-year listing period. The three-year period for computing respondent burden begins with the date when the approved forms are officially made available for submission. Thus the burden period does not correspond exactly to the three-year period of listing. The burden period begins shortly (approximately 30 days) before any PSO's listing period. As a result, the burden for the first PSOs to submit certifications for continued listing at least 45 days before their listing lapses is likely to fall just before the three-year anniversary of their first burden, i.e. their completion of their initial certifications and before the end of their third year of listing. We assume completing this form will require 30 minutes, the same time as for the Certification Form. In the out-years, we expect the number of PSOs to remain stable, with the number of new entrants offset by the number of entities that will relinquish their status or be revoked.

** The Two-Contract Requirement Form will be completed by each PSO within the 24-month period after initial listing by the Secretary.

*** The Information Form will collect data by calendar year, beginning close to the end of the calendar year when PSOs are first listed.

**** A total of 100 PSOs are expected to apply over three years: 50 in year 1; 25 in year 2; and 25 in year 3. Relationship Disclosure, Two-Contract, and even voluntary Information Forms may be submitted by individual PSOs in different years. OCR is anticipating considerable variation in the number of complaints per year. Hence we have expressed the total for each year as the average of the expected total over the three year collection period.

EXHIBIT 2.—ESTIMATED ANNUALIZED COST BURDEN

Form	Number of respondents	Total burden hours	Average hourly wage rate	Total cost burden
Patient Safety Organization Certification Form	100/3	17	$29.82	$506.94
Recertification Form	50/3	8	29.82	238.56
Disclosure Form	50/3	8	29.82	238.56
Two-Contract Requirement Form	100/3	8	29.82	506.94
Information Form	100/3	17	29.82	506.94
Patient Safety Confidentiality Complaint Form	150/3	17	29.82	506.94
Total	500/3	67	29.82	2,504.88

Estimated Annual Costs to the Federal Government

a. AHRQ

By statute, AHRQ must collect and review certifications from an entity that seeks listing or continued listing as PSO under the Patient Safety Act. Additional information collection is also required for entities to remain listed as a PSO (i.e., submissions regarding compliance with the two-contract requirement and reports of certain relationships between a PSO and each of its contracting providers). The cost to AHRQ of processing the information collected with the above-described forms is minimal; an estimated equivalent of only approximately 0.05 FTE or $7,500 per year for each agency and virtually no new overhead costs.

Description	Amount
Personnel and Support Staff	$7,500
Consultant (sub-contractor) services	0
Equipment	0
Supplies	0
All other expenses	0
Average Annual Cost	7,500

b. OCR

OCR cannot conduct its work without collecting information through its proposed complaint forms. Even if OCR did not use complaint forms and only took information orally, it would still have to capture the same information in order to begin processing a complaint. Therefore, the incremental cost to OCR of processing the information collected from the complaint form is minimal and is equivalent to only approximately 0.05 FTE or $7,500 per year, with virtually no new overhead costs.

Description	Amount
Personnel and Support Staff	$7,500
Consultant (sub-contractor) services	0
Equipment	0
Supplies	0
All other expenses	0
Average Annual Cost	7,500

Request for Comments

In accordance with the above-cited Paperwork Reduction Act legislation, comments on the above-described AHRQ and OCR information collection to implement the Patient Safety Act are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ health care research, quality improvement and information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) 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 upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: February 13, 2008.

Carolyn M. Clancy,

Director, AHRQ.

[FR Doc. 08–757 Filed 2–19–08; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Solicitation for Nominations for New Clinical Preventive Health Topics To Be Considered for Review by the United States Preventive Services Task Force

AGENCY: Agency for Healthcare Research Quality (AHRQ), DHHS.

ACTION: Solicit for new topic nominations.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) invites individuals and organizations to nominate primary and secondary prevention topics pertaining to clinical preventive services that they would like the United States Preventive Services Task Force (USPSTF) to consider for review. All topics previously reviewed by the USPSTF are available on AHRQ's Web site, *http://www.preventiveservices.ahrq.gov*.

The USPSTF is an independent panel of experts that makes evidence-based recommendations regarding the provision of clinical preventive services. Clinical preventive services include screening, counseling and preventive medications associated with primary care. The USPSTF makes recommendations about preventive services for asymptomatic people—people without recognized signs or symptoms of the specific conditions targeted by the preventive service.

Topics can be nominated by individuals, organizations, evidence-based practice centers (EPC) and USPSTF members. The USPSTF will consider nominations in two steps. The USPSTF will first determine if the service is eligible, i.e., constitutes primary or secondary prevention applicable to healthy asymptomatic persons; is primary care feasible or referable from primary care; and addresses a condition with a substantial health burden. As a second step, within eligible topics, the USPSTF will prioritize based on the following set of criteria: public health importance (burden of suffering, potential of preventive service to reduce the burden); and potential for greatest Task Force impact (e.g., clinical controversy, practice does not reflect evidence, inappropriate timing in delivery of services).

Basic Topic Nomination Requirements

Nominations must be no more than 500 words in length and must include the information listed below. Nominations may include supporting documentation; reference lists and other supporting documents are not counted against the 500 word limit, but should not exceed ten pages.

Required information:

1. Name of topic.

2. Rationale for consideration by the USPSTF, describing:

a. Characterization as primary or secondary prevention topic (screening, counseling or preventive medication).

b. Primary care relevance (applicable clinical preventive service must be provided by a primary care provider or initiated in the primary care setting which can be defined as family practice, internal medicine, pediatrics or obstetrics/gynecology).

c. Public health importance (burden of disease/suffering, potential of preventive service to reduce burden, including effective interventions). Citations and supporting documents are recommended.

d. Potential impact of USPSTF's review of the topic, i.e., change in clinical practice, research focus, etc.

DATES: Topic nominations should be submitted by March 21, 2008 in order to be considered for 2008–2010. AHRQ will not reply to submissions in response to the request for nominations, but will consider all topic nominations during the selection process. If a topic is selected for review by the USPSTF, the nominator will be notified by AHRQ.

ADDRESSES: Please submit nominations to: Gloria Washington, ATTN: USPSTF Topic Nominations, Center for Primary Care, Prevention & Clinical Partnerships, Agency for Healthcare Research and Quality, 540 Gaither Road, Rockville, MD 20850, Fax: 301.427.1595, E-mail: *gloria.washington@ahrq.hhs.gov*.

FOR FURTHER INFORMATION CONTACT: Therese Miller at *therese.miller@ahrq.hhs.gov* or Gloria Washington at *gloria.washington@ahrq.hhs.gov*.

Arrangement for Public Inspection: All nominations will be available for public inspections by appointment at the Center for Primary Care, Prevention & Clinical Partnerships, 301.427.1500, weekdays between 10 a.m. and 5 p.m. (Eastern time).

SUPPLEMENTARY INFORMATION:

Background

Under Title IX of the Public Health Service Act, AHRQ is charged with enhancing the quality, appropriateness and effectiveness of health care services and access to such services. AHRQ accomplishes these goals through scientific research and promotion of improvements in clinical practice, including prevention of diseases and other health conditions and improvements in the organization, financing and delivery of health care services. 42 U.S.C. 299–299c–7.

The United States Preventive Services Task Force (USPSTF) is an independent expert panel, first established in 1984 under the auspices of the U.S. Public Health Service. Under AHRQ's authorizing legislation noted above, specifically 42 U.S.C. 299b–4(a)(1), the Director of AHRQ is responsible for convening the USPSTF which is to be composed of individuals with appropriate expertise. The mission of the Task Force is to evaluate rigorously the effectiveness of critical preventive services and to formulate recommendations for primary care clinicians regarding the appropriate provision of preventive services. Current Task Force recommendations and associated evidence reviews are available at *http://www.preventiveservices.ahrq.gov*.

Topic Nomination Solicitation

The purpose of this solicitation for new topics by AHRQ and the USPSTF is to create a balanced portfolio of relevant topics for the current Task Force library. Balance in the library is sought on the basis of populations, types of services (screening, counseling, preventive medications) and disease types (cancer; heart and vascular disease; injury and violence-related disorders; infectious diseases; mental disorders and substance abuse; metabolic, nutritional and endocrine diseases; musculoskeletal conditions; obstetric and gynecological conditions; endocrine diseases; musculoskeletal conditions; obstetric and gynecological conditions; pediatric disorders; and vision and hearing disorders). Selection of suggested topics will be made on the basis of the qualifications of nominations as outlined above (see basic topic nomination requirements).

Dated: February 6, 2008.

Carolyn M. Clancy,

Director.

[FR Doc. 08–738 Filed 2–19–08; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–08–0138]

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 Daneshvar, CDC Assistant 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

Pulmonary Function Testing Course Approval Program, 29 CFR 1910.1043 (OMB No. 0920–0138)—Reinstatement—The National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background

NIOSH has the responsibility under the Occupational Safety and Health Administration's Cotton Dust Standard, 29 CFR 1920.1043, for approving courses to train technicians to perform pulmonary function testing in the cotton industry. Successful completion of a NIOSH-approved course is mandatory under the Standard. To carry out its responsibility, NIOSH maintains a Pulmonary Function Testing Course Approval Program. The program consists of an application submitted by potential sponsors (universities, hospitals, and private consulting firms) who seek NIOSH approval to conduct courses, and if approved, notification to NIOSH of any course or faculty changes during the approval period, which is limited to five years. The application form and added materials, including an agenda, curriculum vitae, and course materials are reviewed by NIOSH to determine if the applicant has developed a program which adheres to the criteria required in the Standard. Following approval, any subsequent changes to the course are submitted by course sponsors via letter or e-mail and reviewed by NIOSH staff to assure that the changes in faculty or course content continue to meet course requirements. Course sponsors also voluntarily submit an annual report to inform NIOSH of their class activity level and any faculty changes. Sponsors who elect to have their approval renewed for an additional 5 year period submit a renewal application and supporting documentation for review by NIOSH staff to ensure the course curriculum meets all current standard requirements. Approved courses that elect to offer NIOSH-Approved Spirometry Refresher Courses must submit a separate application and supporting documents for review by NIOSH staff. Institutions and organizations throughout the country voluntarily submit applications and materials to become course sponsors and carry out training. Submissions are required for NIOSH to evaluate a course and determine whether it meets the criteria in the Standard and whether technicians will be adequately trained as mandated under the Standard. There will be no cost to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Forms for respondents	Number of respondents	Number of responses/ respondent	Average burden/ response (in hrs)	Total burden (in hours)
Initial Application	3	1	3.5	11
Annual Report	35	1	30/60	18
Report for Course Changes	12	1	45/60	9
Renewal Application	13	1	6.0	78
Refresher Course Application	10	1	8.0	80
Total				196

Dated: February 11, 2008.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E8–3076 Filed 2–19–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–08–0488]

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. Alternatively, to obtain a copy of the data collection plans and instrument, call 404–639–5960 and send comments to Maryam I. Daneshvar, Acting CDC Reports Clearance Officer, 1600 Clifton Road, NE., MS–D74, Atlanta, Georgia 30333; comments may also be sent by 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 a 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 information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Restriction on Travel of Persons (OMB Control No. 0920–0488)—Reinstatement—National Center for Preparedness, Detection, and Control of Infectious Diseases (NCPDCID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention is requesting OMB approval to reinstate without change the information collection request, ''Restriction on Travel of Persons'' (OMB Control No. 0920–0488). This information collection request expired on March 31, 2007.

CDC is authorized to collect this information under 42 CFR 70.5 (Certain communicable diseases; special requirements). This regulation requires that any person who is in the communicable period for cholera, plague, smallpox, typhus, or yellow fever or having been exposed to any such disease is in the incubation period thereof, to apply for and receive a permit from the Surgeon General or his authorized representative in order to travel from one State or possession to another.

Control of disease transmission within the States is considered to be the province of state and local health authorities, with Federal assistance being sought by those authorities on a cooperative basis without application of Federal regulations. The regulations in 42 part 70 were developed to facilitate Federal action in the event of large outbreaks requiring a coordinated effort involving several states, or in the event of inadequate local control. While it is not known whether, or to what extent situations may arise in which these regulations would be invoked, contingency planning for domestic emergency preparedness is now commonplace. Should these situations arise, CDC will use the reporting and recordkeeping requirements contained in the regulations to carry out quarantine responsibilities as required by law.

There is no cost to respondents other than their time.

ESTIMATE OF ANNUALIZED BURDEN HOURS

Regulation	Respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
42 CFR 70.3 Application to the State of Destination for a permit.	Traveler	2,000	1	15/60	500
	Attending physician	2,000	1	15/60	500
42 CFR 70.3 Copy of material submitted by applicant and permit issued by State health authority.	State health authority	8	250	6/60	200
42 CFR 70.4 Report by the master of a vessel or person in charge of conveyance of the incidence of a communicable disease occurring while in interstate travel.	Master of a vessel or person in charge of conveyance.	1,500	1	15/60	375

ESTIMATE OF ANNUALIZED BURDEN HOURS—Continued

Regulation	Respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
42 CFR 70.4 Copy of material submitted or state or local health authority under this provision.	State health authority ...	20	75	6/60	150
42 CFR 70.5 Application for a permit to move from State to State while in the communicable period.	Traveler	3,750	1	15/60	937.5
	Attending physician	3,750	1	15/60	937.5
Total	.....	.....	.....	.....	3,600

Dated: February 13, 2008.

Maryam I. Daneshvar,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E8–3077 Filed 2–19–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Public Meeting

AGENCY: The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

SUMMARY: The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following public meeting: Partnerships to Advance the National Occupational Research Agenda (NORA)''.

Public Meeting Time and Date: 9 a.m.–3 p.m. EST, February 27, 2008.

Place: Patriots Plaza, 395 E Street SW., Conference Room 9000, Washington, DC 20201.

Purpose of Meeting: NORA has been structured to engage partners with each other and/or with NIOSH to advance NORA priorities. The NORA Liaison Committee continues to be an opportunity for representatives from organizations with national scope to learn about NORA progress and to suggest possible partnerships based on their organization's mission and contacts. This opportunity is now able to be structured as a public meeting via the Internet in order to attract participation by a larger number of organizations and to enhance the success of NORA. Some of the types of organizations of national scope that are especially encouraged to participate are employers, unions, trade associations, labor associations, professional associations, and foundations. Others are welcome.

This meeting will include updates from NIOSH leadership on NORA as well as updates from approximately half of the Councils on their progress, priorities and implementation plans to date, including the Agriculture, Forestry and Fishing Sector; Healthcare and Social Assistance Sector; Transportation, Warehousing and Utilities Sector; Mining Sector and Oil and Gas Extraction Sub-Sector. After each update, there will be time to discuss partnership opportunities.

Status: The meeting is open to the public, limited only by the capacities of the conference call and conference room facilities. There is limited space available in the meeting room (capacity 34). Therefore, information to allow participation in the meeting through the internet (to see the slides) and a teleconference call (capacity 50) will be provided to registered participants. Participants are encouraged to consider attending by this method. Each participant is requested to register for the free meeting by sending an E-mail to *noracoordinator@cdc.gov* containing the participant's name, organization name, contact phone number on the day of the meeting, and preference for participation by web meeting (requirements include: Computer, internet connection and phone, preferably with ''mute'' capability) or in person. An E-mail confirming registration will include the details needed to participate in the web meeting. Non-U.S. citizens are encouraged to participate in the web meeting. Non-U.S. citizens registering to attend in person after February 15 will not have time to comply with security procedures.

Background: The National Occupational Research Agenda (NORA) is a partnership program to stimulate innovative research in occupational safety and health leading to improved workplace practices. Unveiled in 1996, NORA has become a research framework for the nation. Diverse parties collaborate to identify the most critical issues in workplace safety and health. Partners then work together to develop goals and objectives for addressing those needs and to move the research results into practice. The NIOSH role is facilitator of the process. For more information about NORA, see *http://www.cdc.gov/niosh/nora/about.html.*

Since 2006, NORA has been structured by industrial sectors. Eight sector groups have been defined using the North American Industrial Classification System (NAICS). After receiving public input through the web and town hall meetings, NORA Sector Councils have been working to define sector-specific strategic plans for conducting research and moving the results into widespread practice. During 2008, most of these Councils will post draft strategic plans for public comment. For more information, see the link above and choose ''Sector-based Approach,'' ''NORA Sector Councils'' and ''Comment on Draft Sector Agendas'' from the right-side menu.

Contact Person for Technical Information: Sidney C. Soderholm, Ph.D., NORA Coordinator, http://www.noracoordinator@cdc.gov, (202) 245–0665.

Dated: February 12, 2008.

James D. Seligman,

Chief Information Officer, Centers for Disease Control and Prevention.

[FR Doc. E8–3071 Filed 2–19–08; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–D–0053]

Draft Guidance for Industry on Good Reprint Practices for the Distribution of Medical Journal Articles and Medical or Scientific Reference Publications on Unapproved New Uses of Approved Drugs and Approved or Cleared Medical Devices; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Good Reprint Practices for the Distribution of Medical Journal Articles and Medical or Scientific Reference Publications on Unapproved New Uses of Approved Drugs and Approved or Cleared Medical Devices.'' The draft guidance provides drug, biologics, and device manufacturers with the agency's views on the distribution of medical journal articles and scientific or medical reference publications that discuss unapproved new uses for FDA approved drugs or biologics or FDA approved or cleared medical devices to health care professionals and health care entities.

DATES: Submit written or electronic comments on the draft guidance by April 21, 2008. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Office of Policy (HF–11), Office of Commissioner, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit electronic requests for copies of the draft guidance to *http://www.fda.gov/oc/op/goodreprint.html*. Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Jarilyn Dupont, Office of Policy, Office of Commissioner, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3360.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Good Reprint Practices for the Distribution of Medical Journal Articles and Medical or Scientific Reference Publications on Unapproved New Uses of Approved Drugs and Approved or Cleared Medical Devices.'' The draft guidance provides drug, biologics, and device manufacturers with the agency's views on the distribution of medical journal articles and scientific or medical reference publications that discuss unapproved new uses for FDA approved drugs (including biologics) or FDA approved or cleared medical devices to health care professionals and health care entities.

On September 30, 2006, section 401 of the Food and Drug Administration Modernization Act (FDAMA) (section 551 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360aaa)) ceased to be in effect. The provision described certain conditions under which a drug or medical device manufacturer could disseminate medical and scientific information discussing unapproved uses of approved drugs and cleared or approved medical devices to health care professionals and certain entities (including pharmacy benefits managers, health insurance issuers, group health plans, and Federal or State governmental agencies). Section 401 of FDAMA provided that, if the described conditions were met, dissemination of such journal articles or reference publications would not be considered as evidence of the manufacturer's intent that the product be used for an unapproved new use. FDA implementing regulations were codified at 21 CFR part 99.

In light of the sunset of section 401 of FDAMA and in recognition of the public health value to health care professionals of receiving scientific and medical information, FDA is providing its current views and recommendations concerning ''Good Reprint Practices'' for the dissemination of medical journal articles and medical or scientific reference publications on unapproved uses of drugs and medical devices. FDA's legal authority to determine whether distribution of medical or scientific information constitutes promotion of an unapproved ''new use,'' or whether such activities cause a product to be misbranded or adulterated has not changed.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on the dissemination of medical journal articles and medical or scientific reference publications on unapproved uses of approved drugs and approved or cleared medical devices to health care professionals and health care entities. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Please note that as of January 15, 2008, the FDA Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic submissions will be accepted by FDA only through FDMS.

III. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: February 13, 2008.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 08–746 Filed 2–15–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). To request a copy

of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office at (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Data Collection Tool for Rural Health Community-Based Grant Programs: (New)

The mission of the Office of Rural Health Policy (ORHP) is to sustain and improve access to quality care services for rural communities. In its authorizing language (SEC. 711 of the Social Security Act. *[42 U.S.C. 912]*), Congress charged ORHP to ''administer grants, cooperative agreements, and contracts to provide technical assistance and other activities as necessary to support activities related to improving health care in rural areas.''

In 1991, the Health Service Outreach Grants were first appropriated, under the authority of Section 301 of the Public Health Service (PHS) Act. In 1996, the Health Centers Consolidation Act of 1996 added the Section 330A Rural Health Outreach Grant Program to the PHS Act. In 2002, this was amended and authorized again in the PHS Act, Section 330A, as the Rural Health Care Services Outreach, Rural Health Network Development, and Small Health Care Provider Quality Improvement Grant Programs. Five rural health grant programs are currently operating under this authority: (1) The Rural Health Care Services Outreach Grant Program (Outreach), (2) the Rural Health Network Development Program (Network Development), (3) the Small Health Care Provider Quality Improvement Grant Program (Quality), (4) the Delta States Rural Development Network Grant Program (Delta), and (5) the Network Development Planning Grant Program (Network Planning). These grants are to provide expanded delivery of health care services in rural areas, for the planning and implementation of integrated health care networks in rural areas, and for the planning and implementation of small health care provider quality improvement activities.

In general, the grants may be used to expand access to, coordinate, and improve the quality of essential health care services, and enhance the delivery of health care, in rural areas.

For these programs, program performance measures were drafted to provide data useful to the program and to enable HRSA to provide aggregate program data required by Congress under the Government Performance and Results Act (GPRA) of 1993. These measures cover the principle topic areas of interest to ORHP, including: (a) Access to care; (b) the underinsured and uninsured; (c) workforce recruitment and retention; (d) sustainability; (e) health information technology; (f) network development; and (g) health-related clinical measures. Several measures will be used for all five programs. All measures will speak to the Office's progress toward meeting the goals set forth in its strategic plan.

The annual burden estimate for this proposed collection is as follows:

Grant program	Number of respondents	Frequency of responses	Total responses	Hours per response	Total hour burden
Rural Health Outreach Grant Program	121	1	121	1.25	151.25
Rural Health Network Development	33	2	66	4	264
Delta States Rural Development Network Grant Program	12	1	12	1.25	15
Small Health Care Provider Quality Improvement Grant Program	15	1	15	1	15
Network Development Planning Grant Program	10	1	10	4	40
Total	191		234		525.25

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to the desk officer for HRSA, either by e-mail to *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974. Please direct all correspondence to the ''attention of the desk officer for HRSA.''

Dated: February 12, 2008.

Alexandra Huttinger,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. E8–3064 Filed 2–19–08; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental 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 Interagency Autism Coordinating 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 inform the Contact Person listed below in advance of the meeting.

Name of Committee: Interagency Autism Coordinating Committee (IACC).

Date: March 14, 2008.

Time: 9 a.m. to 4 p.m.

Agenda: Discussion of IACC Strategic Plan for Autism Spectrum Disorder Research and responsibilities of the IACC under the Combating Autism Act.

Place: Ronald Reagan Building and International Trade Center, Rotunda, North Tower, 8th Floor, 1300 Pennsylvania Avenue, NW., Washington, DC 20004, Phone: 202–312–1300.

Contact Person: Tanya Pryor, Interagency Autism Coordinating Committee, National Institute of Mental Health, NIH, 6001 Executive Boulevard, Room 6187, MSC 9669, Bethesda, MD 20892–9669, (301) 443–7153, *pryort@mail.nih.gov.*

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their 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, all guests and vehicles are screened upon entry into the underground parking garage at the Ronald Reagan Building. Please allow extra time for this process.

A registration form and information about the meeting is available on the IAC Web site: *https://www.infinityconferences.com/InfiniBase/Reg/NIMH2-37/MarchPublic.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: February 12, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 08–748 Filed 2–19–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; 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 Mental Health Special Emphasis Panel, Building Translational Research in Integrative Behavioral Science.

Date: March 11, 2008.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852. (Telephone Conference Call)

Contact Person: Vinod Charles, PhD., Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9606, Bethesda, MD 20892–9606, 301–443–1606.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, K99 Spring 08 Review.

Date: March 18, 2008.

Time: 8:30 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Henry J. Haigler, PhD., Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, 301–443–7216, *hhaigler@mail.nih.gov*.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, AIDS Center Supplement.

Date: March 28, 2008.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Rockville, MD 20852. (Telephone Conference Call)

Contact Person: Henry J. Haigler, PhD., Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, 301–443–7216, *hhaigler@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: February 12, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 08–749 Filed 2–19–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism, 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 on Alcohol Abuse and Alcoholism Special Emphasis Panel, AA–3—Study Section Conflict.

Date: March 5, 2008.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Beata Buzas, PhD., Scientific Review Administrator, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, 5635 Fishers Lane, Rm 3041, Rockville, MD 20852, 301–443–0800, *bbuzas@mail.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. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: February 12, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 08–750 Filed 2–19–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; 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 Mental Health Special Emphasis Panel, AIDS P30s Spring 08.

Date: March 10, 2008.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852. (Telephone Conference Call)

Contact Person: Henry J. Haigler, PhD., Scientific Review Administrator, Division of Extramural Activities, National Institutes of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6150, MSC 9608, Bethesda, MD 20892–9608, 301/443–7216, *hhaigler@mail.nih.gov*.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Fellowships and Dissertation Grants.

Date: March 10, 2008.

Time: 1:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852. (Telephone Conference Call)

Contact Person: Marina Broitman, PhD., Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6153, MSC 9608, Bethesda, MD 20892–9608, 301–402–8152, *mbroitma@mail.nih.gov*.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Applications for Brainbanks.

Date: March 12, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852. (Telephone Conference Call)

Contact Person: Peter J. Sheridan, PhD., Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6142, MSC 9606, Bethesda, MD 20892, 301–443–1513, *psherida@mail.nih.gov*.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, AIDS R34s Spring 08.

Date: March 13, 2008.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852. (Telephone Conference Call)

Contact Person: Henry J. Haigler, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6150, MSC 9608, Bethesda, MD 20892–9608, (301) 443–7216, *hhaigler@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Research Opportunities in the Social Neuroscience of Mental Health.

Date: March 14, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Allan F. Mirsky, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6157, MSC 9609, Bethesda, MD 20892–9609, (301) 496–2551, *afmirsky@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Kirschstein Research Training Grants (T32).

Date: March 17, 2008.

Time: 12:15 p.m. to 1:15 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Rockville, MD 20852. (Telephone Conference Call)

Contact Person: Serena P. Chu, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9609, Rockville, MD 20892, (301) 443–0004, *sechu@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Community Based Participatory Research.

Date: March, 21, 2008.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Rockville, MD 20852. (Telephone Conference Call)

Contact Person: Aileen Schulte, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institutes of Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6140, MSC 9608, Bethesda, MD 20892–9608, (301) 443–1225, *aschulte@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: February 12, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 08–751 Filed 2–19–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Treatment; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Center for Substance Abuse Treatment (CSAT) National Advisory Council on March 20, 2008.

A portion of the meeting is open and will include discussion of the Center's policy issues, and current administrative, legislative, and program developments.

Attendance by the public will be limited to space available. Public comments are welcome. Please communicate with the CSAT Council's Designated Federal Official, Ms. Cynthia Graham (see contact information below), to make arrangements to attend, comment or to request special accommodations for persons with disabilities.

The meeting will also include the review, discussion, and evaluation of grant applications. Therefore, this portion of the meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with Title 5 U.S.C. 552b(c)(6) and 5 U.S.C. App.2, Section 10(d).

Substantive program information, a summary of the meeting, and a roster of Council members may be obtained as soon as possible after the meeting, either by accessing the SAMHSA Committee Web site, *http://www.nac.samhsa.gov/CSAT/csatnac.aspx*, or by contacting Ms. Graham. The transcript for the open session of the meeting will also be available on the SAMHSA Committee Web site within three weeks after the meeting.

Committee Name: Substance Abuse and Mental Health Services Administration, CSAT National Advisory Council.

Date/Time/Type: March 20, 2008, from 9 a.m.–9:30 a.m.: closed, from 9:40 a.m.–4:30 p.m.: open.

Place: 1 Choke Cherry Road, Sugarloaf and Seneca Conference Rooms, Rockville, Maryland 20857.

Contact: Cynthia Graham, M.S., Designated Federal Official, SAMHSA/CSAT National Advisory Council, 1 Choke Cherry Road, Room 5–1036. Rockville, MD 20857, Telephone: (240) 276–1692, FAX: (240) 276–1690, E-mail: *cynthia.graham@samhsa.hhs.gov*.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. E8–3058 Filed 2–19–08; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given that the Substance Abuse and Mental Health Services Administration (SAMHSA) National Advisory Council will meet on March 12, 2008.

The meeting is open to the public and will include a SAMHSA Administrator's report, and discussions on current legislative, budget and reauthorization issues. The meeting will also include presentations on SAMHSA's activities on Eliminating Health Disparities, SAMHSA's Tribal Agenda, and SAMHSA's Data for Performance/Measurement and Management.

Attendance by the public will be limited to space available. Public comments are welcome. Please communicate with the SAMHSA National Advisory Council Designated Federal Official, Ms. Toian Vaughn (see contact information below), to make arrangements to attend, to comment or to request special accommodations for persons with disabilities.

Substantive program information, a summary of the meeting, and a roster of Council members may be obtained as soon as possible after the meeting, either by accessing the SAMHSA Committee Web site, *http://www.nac.samhsa.gov*, or by contacting Ms. Vaughn. The transcript for the meeting will also be available on the SAMHSA Committee Web site within three weeks after the meeting.

Committee Name: SAMHSA National Advisory Council.

Date/Time/Type: Wednesday, March 12, 2008, from 9 a.m. to 4:45 p.m.: Open.

Place: 1 Choke Cherry Road, Sugarloaf and Seneca Conference Rooms, Rockville, Maryland 20857.

Contact: Toian Vaughn, M.S.W., Designated Federal Official, SAMHSA National Advisory Council, and SAMHSA Committee Management Officer, 1 Choke Cherry Road, Room 8–1089, Rockville, Maryland 20857, Telephone: (240) 276–2307; FAX: (240) 276–2220, E-mail: *toian.vaughn@samhsa.hhs.gov*.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. E8–3057 Filed 2–19–08; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2007–0171]

Great Lakes Pilotage Advisory Committee; Vacancies

AGENCY: Coast Guard, DHS.

ACTION: Request for applications.

SUMMARY: The Coast Guard seeks applications for membership on the Great Lakes Pilotage Advisory Committee (GLPAC). GLPAC provides advice and makes recommendations to the Secretary on a wide range of issues related to pilotage on the Great Lakes, including the rules and regulations that govern the registration, operating requirements, and training policies for all U.S. registered pilots. The Committee also advises on matters related to ratemaking to determine the appropriate charge for pilot services on the Great Lakes.

DATES: Application forms should reach us on or before June 16, 2008.

ADDRESSES: You may request an application form by writing to Commandant (CG–54121), U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593–0001; by calling 202–372–1532; or by faxing 202–372–1929. Send your application in written form to the above street address. This notice and the application form are available on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Rajiv Khandpur, Executive Director of GLPAC, or Mr. John Bobb, Assistant to the Executive Director, telephone 202–372–1532, fax 202–372–1929.

SUPPLEMENTARY INFORMATION: The Great Lakes Pilotage Advisory Committee (GLPAC) is a Federal advisory committee under 5 U.S.C. App. (Pub. L. 92–463). It advises the Secretary on a wide range of issues related to pilotage on the Great Lakes.

GLPAC meets at least once a year at Coast Guard Headquarters, Washington, DC, or another location selected by the Coast Guard. It may also meet for extraordinary purposes. Its working groups may meet to consider specific problems as required.

One appointment for the vacancy will be made from applicants representing the interests of vessel operators that contract for Great Lake pilotage services. To be eligible, applicants should have particular expertise, knowledge, and experience regarding the regulations and policies on the pilotage of vessels on the Great Lakes, and at least 5 years practical experience in maritime operations. GLPAC members serve for a term of 3 years and may be reappointed for one additional term. All members serve at their own expense but receive reimbursement for travel and per diem expenses from the Federal Government.

In support of the policy of the Coast Guard on gender and ethnic diversity, we encourage qualified women and members of minority groups to apply.

Dated: February 8, 2008.

W.A. Muilenburg,

Captain, U.S. Coast Guard, Office of Waterways Management.

[FR Doc. E8–3078 Filed 2–19–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2007–0170]

Navigation Safety Advisory Council; Vacancies

AGENCY: Coast Guard, DHS.

ACTION: Request for applications.

SUMMARY: The Coast Guard seeks applications for membership on the Navigation Safety Advisory Council (NAVSAC). NAVSAC provides advice and makes recommendations to the Secretary on a wide range of issues related to the prevention of collisions, rammings, and groundings. This includes, but is not limited to: Inland and International Rules of the Road, navigation regulations and equipment, routing measures, marine information, diving safety, and aids to navigation systems.

DATES: Application forms should reach us on or before June 16, 2008.

ADDRESSES: You may request an application form by writing to Commandant (CG–54121), U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593–0001; by calling 202–372–1532; or by faxing 202–372–1929. Send your application in written form to the above street address. This notice and the application form are available on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Mike Sollosi, Executive Director of NAVSAC, or John Bobb, Assistant to the Executive Director, telephone 202–372–1532, fax 202–372–1929.

SUPPLEMENTARY INFORMATION: The Navigation Safety Advisory Council (NAVSAC) is a Federal advisory committee under 5 U.S.C. App. (Pub. L. 92–463). NAVSAC provides advice and makes recommendations to the Secretary of Homeland Security on a wide range of issues related to the prevention of collisions, rammings, and groundings. This includes, but is not limited to: Inland and International Rules of the Road, navigation regulations and equipment, routing measures, marine information, diving safety, and aids to navigation systems.

NAVSAC meets at least once a year at Coast Guard Headquarters, Washington, DC or another location selected by the Coast Guard. It may also meet for extraordinary purposes. Its subcommittees and working groups may meet to consider specific problems as required.

Selected individuals will serve as either Special Government Employees (SGE) or Representative Members. An SGE Member is an officer or employee of the executive or legislative branch who is retained, designated, appointed, or employed to perform temporary duties (either on a full-time or intermittent basis) for not to exceed 130 days during any period of 365 consecutive days. The definition of SGE also includes individuals in certain miscellaneous positions, who are deemed SGEs without regard to the number of days of service. In general, SGEs provide Federal advisory committees with their own best independent judgment based on their individual expertise. (See 18 U.S.C. 202(a).)

A Representative Member is an individual who is not a Federal employee (or a Federal employee who is attending in a personal capacity), who is selected for membership on a Federal advisory committee for the purpose of obtaining the point of view or perspective of an outside interest group or stakeholder interest. While representative members may have expertise in a specific area, discipline, or subject matter, they are not selected solely on the basis of this expertise, but rather are selected to represent the point of view of a group or particular interest. A representative member may represent groups or organizations, such as industry, labor, consumers or any other recognizable group of persons having an interest in matters before the committee.

We will consider applications for seven positions that expire or become vacant in November 2008. Applications will be considered from persons representing, insofar as practical, the following groups: Two persons from among recognized experts and leaders in organizations having an active interest in the Rules of the Road and vessel and port safety; two persons from among professional mariners, recreational boaters and the recreational boating industry; two persons with an interest in maritime law; and one person who is a Federal or State official with responsibility for vessel and port safety.

Organizations having an active interest in the Rules of the Road and vessel and port safety are considered to include organizations representing vessel owners and operators of vessels operating on international waters and/or the inland waters of the United States; the Federal and State maritime academies; maritime education and training institutions teaching Rules of the Road, navigation, and electronic navigation; and organizations established to facilitate vessel movement and navigational safety. Members from these organizations are appointed to express the viewpoint of the organizations listed above and are SGEs as defined in section 202(a) of title 18, United States Code and will not be appointed as Representative Members.

Professional mariners are considered to include actively working or retired mariners experienced in applying the Inland and/or International Rules as masters or licensed deck officers of vessels operating on international waters or the inland waters of the United States, and federal or state licensed pilots. Recreational boaters and the recreational boating industry are specifically identified groups that members may represent. Members from these groups are appointed to express the viewpoint of the groups listed above in which they serve or have served and are not SGEs as defined in section 202(a) of title 18, United States Code and will be appointed as Representative Members.

Individuals with an interest in maritime law are SGEs as defined in section 202(a) of title 18, United States Code and will not be appointed as Representative Members. Individuals who are Federal or State officials with a responsibility for vessel and port safety are not SGEs as defined in section 202(a) of title 18, United States Code and will be appointed as Representative Members.

All individuals meeting the above requirements are invited to apply. Each member serves for a term of 3 years. A few members may serve consecutive terms. All members serve at their own expense and receive no salary but receive reimbursement for travel expenses and per diem expenses from the Federal Government.

In support of the policy of the Coast Guard on gender and ethnic diversity, we encourage qualified women and members of minority groups to apply.

If you are selected as a member who represents the general public, we will require you to complete a Confidential Financial Disclosure Report (OGE Form 450). We may not release the report or the information in it to the public, except under an order issued by a Federal court or as otherwise provided under the Privacy Act (5 U.S.C. 552a).

Dated: February 8, 2008.

W.A. Muilenburg,

Captain, U.S. Coast Guard, Office of Waterways Management.

[FR Doc. E8–3080 Filed 2–19–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket Nos. TSA–2006–24191; Coast Guard–2006–24196]

Transportation Worker Identification Credential (TWIC); Enrollment Dates for the Ports of Anacortes, WA and Norfolk, VA

AGENCY: Transportation Security Administration; United States Coast Guard; DHS.

ACTION: Notice.

SUMMARY: The Department of Homeland Security (DHS) through the Transportation Security Administration (TSA) issues this notice of the dates for the beginning of the initial enrollment for the Transportation Worker Identification Credential (TWIC) for the Ports of Anacortes, WA and Norfolk, VA.

DATES: TWIC enrollment begins in Anacortes, WA on February 22, 2008, and in Norfolk, VA on February 29, 2008.

ADDRESSES: You may view published documents and comments concerning the TWIC Final Rule, identified by the docket numbers of this notice, using any one of the following methods.

(1) Searching the Federal Docket Management System (FDMS) Web page at *http://www.regulations.gov;*

(2) Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html;* or

(3) Visiting TSA's Security Regulations Web page at *http://www.tsa.gov* and accessing the link for ''Research Center'' at the top of the page.

FOR FURTHER INFORMATION CONTACT: James Orgill, TSA–19, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220. Transportation Threat Assessment and Credentialing (TTAC), TWIC Program, (571) 227–4545; e-mail: *credentialing@dhs.gov.*

Background

The Department of Homeland Security (DHS), through the United States Coast Guard and the Transportation Security Administration (TSA), issued a joint final rule (72 FR

3492; January 25, 2007) pursuant to the Maritime Transportation Security Act (MTSA), Public Law 107–295, 116 Stat. 2064 (November 25, 2002), and the Security and Accountability for Every Port Act of 2006 (SAFE Port Act), Public Law 109–347 (October 13, 2006). This rule requires all credentialed merchant mariners and individuals with unescorted access to secure areas of a regulated facility or vessel to obtain a TWIC. In this final rule, on page 3510, TSA and Coast Guard stated that a phased enrollment approach based upon risk assessment and cost/benefit would be used to implement the program nationwide, and that TSA would publish a notice in the **Federal Register** indicating when enrollment at a specific location will begin and when it is expected to terminate.

This notice provides the start dates for TWIC initial enrollment at the Ports of Anacortes, WA on February 22, 2008, and in Norfolk, VA on February 29, 2008. The Coast Guard will publish a separate notice in the **Federal Register** indicating when facilities within the Captain of the Port Zone Seattle, including those in the Port of Anacortes, and Captain of the Port Zone Hampton Roads, including those in the Port of Norfolk must comply with the portions of the final rule requiring TWIC to be used as an access control measure. That notice will be published at least 90 days before compliance is required.

To obtain information on the pre-enrollment and enrollment process, and enrollment locations, visit TSA's TWIC Web site at *http://www.tsa.gov/twic.*

Issued in Arlington, Virginia, on February 13, 2008.

Rex Lovelady,

Program Manager, TWIC, Office of Transportation Threat Assessment and Credentialing, Transportation Security Administration.

[FR Doc. E8–3131 Filed 2–19–08; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Intertek USA, Inc., as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Intertek USA, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Intertek USA, Inc., 505 North Craft Highway, Chickasaw, AL 36611, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/*.

DATES: The accreditation and approval of Intertek USA, Inc., as commercial gauger and laboratory became effective on July 18, 2007. The next triennial inspection date will be scheduled for July 2010.

FOR FURTHER INFORMATION CONTACT: Commercial Gauger Laboratory Program Manager, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: January 31, 2008.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. E8–3093 Filed 2–19–08; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Intertek USA, Inc., as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Intertek USA, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Intertek USA, Inc., 1114 Seaco Avenue, Deer Park, TX 77217, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/*.

DATES: The accreditation and approval of Intertek USA, Inc., as commercial gauger and laboratory became effective on December 13, 2007. The next triennial inspection date will be scheduled for December 2010.

FOR FURTHER INFORMATION CONTACT: Commercial Gauger Laboratory Program Manager, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: January 31, 2008.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. E8–3094 Filed 2–19–08; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of Intertek USA, Inc., as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Intertek USA, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Intertek USA, Inc., 1818 W. State Road 84, Bay 105, Fort Lauderdale, FL 33315, has been approved to gauge

and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/*.

DATES: The accreditation and approval of Intertek USA, Inc., as commercial gauger and laboratory became effective on September 19, 2007. The next triennial inspection date will be scheduled for September 2010.

FOR FURTHER INFORMATION CONTACT: Commercial Gauger Laboratory Program Manager, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: January 31, 2008.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. E8–3090 Filed 2–19–08; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation and Approval of SGS North America, Inc., as a Commercial Gauger and Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of SGS North America, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, SGS North America, Inc., 1100 SE 24th Street, Fort Lauderdale, FL 33316, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/*.

DATES: The accreditation and approval of SGS North America, Inc., as commercial gauger and laboratory became effective on September 20, 2007. The next triennial inspection date will be scheduled for September 2010.

FOR FURTHER INFORMATION CONTACT: Commercial Gauger Laboratory Program Manager, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: January 31, 2008.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. E8–3092 Filed 2–19–08; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Accreditation of Sea, LTD., as a Commercial Laboratory

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation of SEA, Ltd., as a commercial laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12, SEA, Ltd., 7349 Worthington-Galena Road, Columbus, OH 43085, has been accredited to test petroleum, petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12. Anyone wishing to employ this entity to conduct laboratory analyses should request and receive written assurances from the entity that it is accredited by the U.S. Customs and Border Protection to conduct the specific test requested. Alternatively, inquires regarding the specific test this entity is accredited to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/*.

DATES: The accreditation of SEA, Ltd., as commercial laboratory became effective on September 26, 2007. The next triennial inspection date will be scheduled for September 2010.

FOR FURTHER INFORMATION CONTACT: Commercial Gauger Laboratory Program Manager, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: January 31, 2008.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. E8–3096 Filed 2–19–08; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Approval of Intertek USA, Inc., as a Commercial Gauger

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of approval of Intertek USA, Inc., as a commercial gauger.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.13, Intertek USA, Inc., Urb. Constancia 1811 Paseo Las Colonias, Ponce, PR 00624, has been approved to gauge petroleum, petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.13. Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquires regarding the specific gauger service this entity is

approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/.*

DATES: The approval of Intertek USA, Inc., as commercial gauger became effective on September 28, 2007. The next triennial inspection date will be scheduled for September 2010.

FOR FURTHER INFORMATION CONTACT: Commercial Gauger Laboratory Program Manager, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: January 31, 2008.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. E8–3097 Filed 2–19–08; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5191–N–07]

Notice of Proposed Information Collection: Comment Request; Comment Request; Hospital—Section 242, Application for Project Mortgage Insurance

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* April 21, 2008.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; e-mail *Lillian_L._Deitzer@HUD.gov* or telephone (202)402–8048.

FOR FURTHER INFORMATION CONTACT: Paul Giaudrone, Senior Financial Analyst, Office of Insured Health Care Facilities, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–0599 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Comment Request; Hospital—Section 242, Application for Project Mortgage Insurance.

OMB Control Number, if applicable: 2502–0518.

Description of the need for the information and proposed use: Information on form HUD–92013–HOSP is collected to provide HUD with the data necessary to determine if a hospital qualifies for FHA insurance under section 242 of the National Housing Act. HUD reviews the information to determine if the proposed project meets basic eligibility criteria, underwriting standards, and adequacy of state and/or local certifications, approvals, and waivers. Information on form HUD–93305–M–H is needed to insure proper recordation of project costs, identify and monitor identity of interests between the Mortgagor and General Contractor, subcontractors, suppliers, or equipment lessors and agree upon procedures when such identity of interests arise, and to insure conformity with the National Housing Act and its Regulations.

Agency form numbers, if applicable: HUD–92013–HOSP and HUD–93305 M–H.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of burden hours needed to prepare the information collection is 17,566; the number of respondents is 18 generating approximately 36 annual responses; the frequency of response is on occasion; and the estimated time needed to prepare the response 1009 hours.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: February 14, 2008.

Frank L. Davis,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. E8–3144 Filed 2–19–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5187–N–04]

Technical Suitability of Products Program Section 521 of the National Housing Act

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This information is needed under HUD's Technical Suitability of Products Program to determine the acceptance of materials and products to be used in structures approved for mortgages insured under the National Housing Act. Respondents are manufacturers seeking acceptance of their products by HUD.

DATES: *Comments Due Date:* March 21, 2008.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0313) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian_L_Deitzer@HUD.gov* or telephone (202) 402–8048. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Technical Suitability of Products Program Section 521 of the National Housing Act.

OMB Approval Number: 2502–0313.

Form Numbers: HUD–92005.

Description of the Need for the Information and Its Proposed Use: This information is needed under HUD's Technical Suitability of Products Program to determine the acceptance of materials and products to be used in structures approved for mortgages insured under the National Housing Act. Respondents are manufacturers seeking acceptance of their products by HUD.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	x	Hours per response	=	Burden hours
Reporting Burden	50	1		44		2,200

Total Estimated Burden Hours: 2,200.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 13, 2008.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E8–3148 Filed 2–19–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Final Comprehensive Conservation Plan for Medicine Lake National Wildlife Refuge Complex, Medicine Lake, MT

AGENCY: Fish and Wildlife Service, Interior

ACTION: Notice of availability.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service) announce that the final Comprehensive Conservation Plan (CCP) for the Medicine Lake National Wildlife Refuge (NWR) Complex is available. This CCP, prepared pursuant to the National Wildlife Refuge System Improvement Act of 1997 and the National Environmental Policy Act of 1969, describes how the Service intends to manage the Medicine Lake NWR Complex consisting of Medicine Lake NWR, the Northeast Montana Wetland Management District (WMD), and Lamesteer NWR for the next 15 years.

ADDRESSES: A copy of the CCP or Summary may be obtained by writing to U.S. Fish and Wildlife Service, Division of Refuge Planning, 134 Union Boulevard, Suite 300, Lakewood, Colorado, 80228, or downloaded from *http://mountain-prairie.fws.gov/planning.*

FOR FURTHER INFORMATION CONTACT: Laurie Shannon, 303–236–4317 (phone); 303–236–4792 (fax); or *laurie_shannon@fws.gov*.

SUPPLEMENTARY INFORMATION: The Medicine Lake NWR Complex is located within the highly productive prairie pothole region of the Northern Great Plains, along the western edge of the Missouri Coteau, in Northeastern Montana. It is composed of three individual units: the Medicine Lake NWR, the Northeast Montana WMD, and the Lamesteer NWR. These refuges are managed as one complex, and together they are dispersed across four counties and require management of more than 73,532 acres of Service-owned lands and wetland and/or grassland easements or leases on privately-owned land. Medicine Lake NWR encompasses about 31,534 acres including 11,360 acres of designated wilderness and was established in 1935 as ''* * * a refuge and breeding ground for migratory birds and other wildlife'' (Executive Order 7148, dated August 29, 1935). The Northeast Montana WMD was established in 1968 and consists of Waterfowl Production Areas and wetland and grassland easements. ''Waterfowl Production Areas may be acquired without regard to the limitations and requirements of the Migratory Bird Conservation Act (16 U.S.C. 715 et seq.), but all of the provisions of such Act which govern the administration and protection of lands acquired thereunder, except the inviolate sanctuary provisions of such Act * * * '' (16 U.S.C. 718 d). Lamesteer NWR, established in 1942 as an easement refuge, was described as ''800 acres in Wibaux County, Montana, as refuge and breeding ground for migratory birds and other wildlife'' (Executive Order 9166, dated May 19, 1942).

The refuge complex is home to approximately 280 species of birds, 38 species of mammals, and 17 species of reptiles and amphibians. Each unit of the National Wildlife Refuge System (Refuge System), including the Medicine Lake NWR Complex, has specific purposes for which it was established and for which legislation was enacted. Those purposes are used to develop and prioritize management goals and objectives within the Refuge System mission, and to guide which public uses will occur on these refuges. The planning process is a way for the Service and the public to evaluate management goals and objectives for the best possible conservation efforts of this important wildlife habitat, while

providing for wildlife-dependent recreation opportunities that are compatible with the refuges' establishing purposes and the mission of the Refuge System.

This final CCP identifies goals, objectives, and strategies for the management of Medicine Lake NWR Complex that emphasize restoration and maintenance of native habitats in vigorous condition for migratory birds. The CCP places high importance on the control of invasive plant species with partners and integrated pest management. It seeks to provide habitats in order to contribute to conservation, enhancement, and production of migratory bird species while protecting federally listed species.

The availability of the draft CCP and Environmental Assessment (EA) was announced in the **Federal Register** on August 7, 2007, and made available for a 30-day public review and comment period. The draft CCP/EA evaluated three alternatives for managing Medicine Lake NWR and the Northeast Montana WMD, and two alternatives for managing Lamesteer NWR for the next 15 years.

The preferred alternative would conserve the natural resources of Northeast Montana by restoring or protecting the native and mixed-grass prairie grasslands and maintaining high-quality nesting habitats within the refuge complex. The refuge would reduce populations of selected species of invasive plants, and control of crested wheatgrass would be the management priority. The approved refuge administrative boundary would be expanded through willing sellers or buyers by about 722 hectares (1,784 acres) based on three priority areas. This alternative would focus funding for visitor-use resources on developing access and improving opportunities for wildlife-dependent recreational uses (hunting, fishing, wildlife observation, photography, interpretation, and environmental education) while also encouraging a greater understanding and appreciation for the mixed grass prairie ecosystem.

We selected this alternative because it best meets the purposes and goals of the Medicine Lake NWR and the Northeast Montana WMD, as well as the mission and goals of the Refuge System. The preferred alternative also will benefit federally listed species, shore birds, migrating and nesting waterfowl, neotropical migrants, including birds of management concern and resident wildlife. Environmental education and partnerships will result in improved wildlife-dependent recreational opportunities. Cultural and historical resources as well as federally listed species will be protected.

The preferred alternative for Lamesteer NWR would take the refuge out of the Refuge System and relinquish the easement to the current landowner. The Service's easement requirements would no longer exist, and we would divest our interest in the refuge. This would be carried out within 15 years.

Through the CCP process, we evaluated the level of national trust resource values represented by Lamesteer NWR to determine if those values and associated risks were sufficient to justify continuation of the easement. Trust resources are resources that through law or administrative act are held in trust for the people by the government. We determined that Lamesteer NWR possesses no trust resource values and minimal habitat value for wildlife. We have no management authority on the uplands surrounding the easement, and public access is by permission of the landowner. Further, the dam structure is in need of substantial repairs to meet the State of Montana and regional dam safety standards. We determined that Lamesteer NWR does not meet the goals of the Refuge System or the legislative purpose of the refuge.

We are furnishing this notice to advise other agencies and the public of the availability of the final CCP, provide information about the desired conditions for the Medicine Lake NWR Complex, and offer details on how we will implement management strategies. Based on the review and evaluation of the information contained in the EA, the Regional Director has determined that implementation of the Final Plan does not constitute a major Federal action that would significantly affect the quality of the human environment within the meaning of Section 102(2)(c) of the National Environmental Policy Act. Therefore, an Environmental Impact Statement will not be prepared.

Dated: October 2, 2007.

Gary Mowad,

Acting Deputy Regional Director.

Editorial Note: This document was received at the Office of the Federal Register on February 14, 2008.

[FR Doc. E8–3079 Filed 2–19–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–EA–2008–N0025]

Sport Fishing and Boating Partnership Council

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The Fish and Wildlife Service announces a public meeting of the Sport Fishing and Boating Partnership Council (Council).

DATES: The meeting will be held on Monday, March 10, 2008, from 1:30 p.m. to 5 p.m. and Tuesday, March 11, 2008, from 8:30 a.m. to 1:30 p.m. (Eastern Time). Members of the public wishing to participate in the meeting must notify Douglas Hobbs by close of business on Friday, February 29, 2008, per instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

ADDRESSES: The meeting will be held at the Department of the Interior, Room 5160, 1849 C Street, NW, Washington, DC, 20240; telephone (703) 358–2336.

FOR FURTHER INFORMATION CONTACT: Douglas Hobbs, Council Coordinator, 4401 North Fairfax Drive, Mailstop 3103–AEA, Arlington, Virginia 22203, telephone (703) 358–2336, fax (703) 358–2548, or via e-mail at *doug_hobbs@fws.gov*.

SUPPLEMENTARY INFORMATION: In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the Sport Fishing and Boating Partnership Council will hold a meeting on Monday, March 10, 2008, from 1:30 p.m. to 5 p.m. and Tuesday, March 11, 2008, from 8:30 a.m. to 1:30 p.m. (Eastern Time).

The Council was formed in January 1993 to advise the Secretary of the Interior, through the Director, U.S. Fish and Wildlife Service, on nationally significant recreational fishing, boating, and aquatic resource conservation issues. The Council represents the interests of the public and private sectors of the sport fishing, boating, and conservation communities and is organized to enhance partnerships among industry, constituency groups, and government. The 18-member Council, appointed by the Secretary of the Interior, includes the Director of the Service and the president of the Association of Fish and Wildlife Agencies, who both serve in ex officio capacities. Other Council members are Directors from State agencies

responsible for managing recreational fish and wildlife resources and individuals who represent the interests of saltwater and freshwater recreational fishing, recreational boating, the recreational fishing and boating industries, recreational fisheries resource conservation, Native American tribes, aquatic resource outreach and education, and tourism. Background information on the Council is available at *http://www.fws.govv/sfbpc*.

The Council will convene to consider: (1) The Council's continuing role in providing input to the Fish and Wildlife Service on the Service's strategic plan for its Fisheries Program; (2) the Council's work in addressing the issue of boating and fishing access; (3) the Council's role as a facilitator of discussions with Federal and State agencies and other sport fishing and boating interests concerning a variety of national boating and fisheries management issues; (4) the Council's work to assess the Clean Vessel Act Grant Program; (5) the potential Council role in providing information to Service and Department on the upcoming reauthorization of the Sport Fish Restoration and Boating Trust Fund; (6) the Council's role in providing the Secretary with information about the implementation of the Strategic Plan for the National Outreach and Communications Program, authorized by the 1998 Sportfishing and Boating Safety Act, that is now being implemented by the Recreational Boating and Fishing Foundation, a private, nonprofit organization; and (7) other Council business. The final agenda will be posted on the Internet at *http://www.fws.gov/sfbpc*.

Procedures for Public Input: Interested members of the public may submit relevant written or oral information for the Council to consider during the public meeting. Questions from the public will not be considered during this period. Speakers who wish to expand upon their oral statements or those who had wished to speak but could not be accommodated on the agenda are invited to submit written statements to the Council.

Individuals or groups requesting an oral presentation at the public Council meeting will be limited to two minutes per speaker, with no more than a total of one-half hour for all speakers. Interested parties should contact Douglas Hobbs, Council Coordinator, in writing (preferably via e-mail), by Friday, February 22, 2008, at the contact information noted above, to be placed on the public speaker list for this meeting. Written statements should be received by Friday, February 29, 2008, so that the information may be made available to the Council for their consideration prior to this meeting. Written statements should be supplied to the Council Coordinator in the following formats: One heard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat PDF, WordPerfect, MS Word, MS PowerPoint, or Rich Text files in IBM—PC/Windows 98/2000/XP format).

Anyone wishing to attend this meeting must register by close of business Friday, February 29, 2008, in order to attend. Because entry to Federal buildings is restricted, all visitors are required to pre-register to be admitted. Please submit your name, time of arrival, e-mail address and phone number to Douglas Hobbs, and he will provide you with instructions for admittance. Mr. Hobbs' e-mail address is *doug_hobbs@fws.gov* and his phone number is (703) 358–2236.

Summary minutes of the conference will be maintained by the Council Coordinator at 4401 N. Fairfax Drive, MS–3103–AEA, Arlington, VA 22203, and will be available for public inspection during regular business hours within 30 days following the meeting. Personal copies may be purchased for the cost of duplication.

Dated: February 6, 2008

Kenneth Stansell,

Acting Director.

[FR Doc. 08–764 Filed 2–19–08; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

National Cooperative Geologic Mapping Program (NCGMP) Advisory Committee

AGENCY: U.S. Geological Survey.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 106–148, the NCGMP Advisory Committee will meet in Room BA102A of the John Wesley Powell Building of the U.S. Geological Survey, 12201 Sunrise Valley Drive, Reston, Virginia. The Advisory Committee, composed of scientists from Federal Agencies, State Agencies, academic institutions, and private companies, will advise the Director of the U.S. Geological Survey on planning and implementation of the geologic mapping program. Topics to be reviewed and discussed by the Advisory Committee include the:

- Progress of the NCGMP towards fulfilling the purposes of the National Geological Mapping act of 1992
- Field oriented geoscience experience for college and university students.
- Paucity of Black, Hispanic, and Native American college and university students with geoscience majors.

DATES: March 6–7, 2008 commencing at 8:30 a.m. on March 6, and adjourning by 5 p.m. on March 7.

FOR FURTHER INFORMATION CONTACT: Laurel M. Bybell, U.S. Geological Survey, 908 National Center, Reston, Virginia 20192 (703) 648–5281.

SUPPLEMENTARY INFORMATION: Meetings of the National Cooperative Geological Mapping Program Advisory Committee are open to the Public.

Dated: February 7, 2008.

Peter T. Lyttle,

Acting Associate Director for Geology, U.S. Geological Survey.

[FR Doc. 08–759 Filed 2–29–08; 8:45 am]

BILLING CODE 4311–AM–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID 100 1220MA 241A: DBG081006]

Notice of Public Meeting: Resource Advisory Council to the Boise District, Bureau of Land Management, U.S. Department of the Interior

AGENCY: Bureau of Land Management, U.S. Department of the Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Boise District Resource Advisory Council (RAC), will hold a meeting as indicated below.

DATES: The meeting scheduled for January 31, 2008, was cancelled due to adverse weather and hazardous driving conditions. The business scheduled for that meeting will be conducted on March 12, 2008, beginning at 9 a.m. and adjourning at 2 p.m. The meeting will be held at the Boise District Office located at 3948 S. Development Avenue, Boise, Idaho. Public comment periods will be held during the course of the meeting.

FOR FURTHER INFORMATION CONTACT: M.J. Byrne, Public Affairs Officer and RAC Coordinator, BLM Boise District, 3948 Development Ave., Boise, ID 83705, Telephone (208) 384–3393.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in southwestern Idaho.

RAC Officers for the 2008 Fiscal Year will be elected. The Council will be briefed by a representative of Idaho's U.S. Senator Mike Crapo's office regarding the Fee Repeal and Expanded Access Act of 2007 that he is a co-sponsor of with Montana's U.S. Senator Mike Baucus. The bill would repeal the 2004 passed Federal Lands Recreation Enhancement Act. There will be a discussion about the West-Wide Energy Corridor Programmatic Environmental Impact Statement and proposed routes going through the District's public lands. Hot Topics will be discussed by the District Manager and Field Office managers will provide highlights on activities in their offices.

Agenda items and location may change due to changing circumstances. All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, or other reasonable accommodations, should contact the BLM Coordinator as provided above.

Dated: February 8, 2008.

David Wolf,

Associate, District Manager.

[FR Doc. E8–3072 Filed 2–19–08; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

National Park Service

60-Day Notice of Intention To Request Clearance of Collection of Information; Opportunity for Public Comment

AGENCY: Department of the Interior, National Park Service.

ACTION: Notice and request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 and 5 CFR Part 1320, Reporting and Record Keeping Requirements, the National Park Service (NPS) invites public comments on a proposed new collection of information (1024–xxxx).

DATES: Public comments will be accepted on the proposed Information Collection Request (ICR) on or before April 21, 2008.

ADDRESSES: *Send Comments To:* Eppley Institute for Parks & Public Lands. Indiana University Research Park, RE: Assateague Island National Seashore (ASIS), 501 N. Morton Street, Suite 100, Bloomington, Indiana 474074; or via phone at 812/855–3095; or via fax 812/856–5600; or via e-mail at *eppley@indiana.edu*. Also, you may send comments to Leonard E. Stowe, NPS Information Collection Clearance Officer, 1849 C St., NW., (2605), Washington, DC 20240, or by e-mail at *leonard stowe@nps.gov*. All responses of this notice will be summarized and included in the request for the Office of Management and Budget (OMB) approval. All comments will become a matter of public record.

To Request a Draft of Proposed Collection of Information Contact: Eppley Institute for Parks & Public Lands Indiana University Research Park, RE: ASIS, 501 N. Morton Street, Suite 100, Bloomington, Indiana 47404; or via phone at 812/855–3095; or via fax at 812/855–5600; or via e-mail at *eppley@indiana.edu*.

FOR FURTHER INFORMATION CONTACT: Dr. James Gramann, NPS Social Science Program, 1201 ''Eye'' Street, Washington, DC 20005; or via phone at 202/513–7189; or via e-mail at *James_Gramann@partner.nps.gov*. You are entitled to a copy of the entire ICR package free of charge once the package is submitted to OMB for review. You can access this ICR at *http://www.reginfo.gov/public/*.

SUPPLEMENTARY INFORMATION:

Title: Assessing Visitor Attitudes, Experiences and Expectations associated with the Management and Use of Over-sand Vehicles at Assateague Island National Seashore.

Bureau Form Number: None.

OMB Number: To be requested.

Expiration Date: To be requested.

Type of Request: New collection.

Description of Need: The proposed study would provide information for use in identifying and evaluating alternatives for future management of Over-Sand Vehicle (OSV) use at Assateague Island National Seashore (ASIS), Maryland. The purpose of this research is to provide park managers with information about the types and characteristics of visitors to the OSV zone and adjacent backcountry areas, attributes of the OSV zone important to the quality of visitor experience, and visitor attitudes regarding OSV management and resource protection practices.

The use of Over-Sand Vehicles (OSVs) for access and recreation is a traditional activity that was occurring on ASIS prior to the establishment of ASIS in 1965. Management of OSV use was formalized with the adoption of special regulations (36 CFR 7.65) in 1974, which established a maximum limit of 145 vehicles using the Maryland District OSV zone at any time, vehicle and equipment requirements, an OSV permit system, and general requirements for legal OSV operation. OSV use was re-evaluated during development of the Seashore's 1982 General Management Plan (GMP). The GMP designated a ''Traditional Recreation Subzone'' in the Maryland District approximately 12-miles long to be managed for multiple uses including over-sand travel by properly equipped and permitted OSVs. The Traditional Recreation Subzone also includes a small area for overnight accommodation of self-contained OSVs, and tow hike-in, beach front, primitive backcountry campgrounds.

In 2008, the NPS will begin a revision of the GMP for ASIS. GMPs are broad umbrella documents that set the long-term goals for an individual park unit based upon the area's enabling legislation and other relevant laws and executive orders. The GMP (1) clearly defines the desired natural and cultural resource conditions to be achieved and maintained over time; (2) clearly defines the necessary conditions for visitors to understand, enjoy, and appreciate the park's significant resources; (3) identifies the kinds and levels of management activities, visitor use, and development that are appropriate for maintaining the desired conditions; and (4) identifies indicators and standards for maintaining the desired conditions.

The proposed study will develop information about contemporary OSV use and the nature and expectations of visitors to the Traditional Recreation Subzone. The results are expected to assist in the upcoming GMP revision process by providing currently unavailable information for decision-making related to the future management of OSV use at the National Seashore. The study has two primary objectives: (1) Develop baseline data on users of the Traditional Recreation Subzone including types, frequency and patterns of use, and socio-economic and demographic characteristics: and (2) identify potential indicators and standards of quality for maintaining the desired visitor experience in the Traditional Recreation Subzone.

To accomplish these objectives, the proposed study includes two components. The first focuses on OSV permit holders utilizing the ASIS

Traditional Recreation Subzone. The second component targets other, non-OSV users of the Traditional Recreation Subzone.

1. Survey OSV Permit Holders Utilizing the Traditional Recreation Subzone

The purpose of the proposed research is to provide park managers with information about National Seashore OSV users, attributes and quality of the current OSV experience, and user attitudes regarding OSV management. A randomly selected group of current (2008) OSV permit holders will be provided survey questionnaires either in-person or through the mail. The survey will include questions intended to develop information describing OSV user demographics, the frequency, patterns and type of OSV use, standards of quality and factors influencing visitor experience (both positive and negative), and user attitudes regarding the impacts of current and potential future OSV management and resource protection practices. This research is proposed for the summer and fall of 2008.

2. Survey Non-OSV Users of the Traditional Recreation Subzone

The second component of the proposed research is intended to provide park managers with information about other, non-OSV users of the National Seashore's Traditional Recreation Subzone. Non-OSV users of the Subzone include day use hikers, overnight campers using the hike-in primitive backcountry campgrounds, and boat-in visitors. A randomly selected group of visitors issued backcountry camping permits between September 1, 2007 and August 30, 2008, will be provided survey questionnaires through the mail. The survey will include questions similar to the types described above for Component 1, except that the intent will be to develop information from the perspective of non-OSV users of the Traditional Recreation Subzone. This research is proposed for the summer and fall of 2008. The obligation to respond is voluntary.

Automated data collection: This information will be collected via questionnaires, distributed either on-site or through the mail. No automated data collection will take place.

Description of respondents: Component 1—on-site or mail-back surveys: ASIS OSV special use permit holders for calendar year 2008. *Component 2—mail-back surveys:* ASIS visitors issued backcountry camping permits between September 1, 2007 and August 31, 2008.

Estimated average number of respondents: Component 1: 300 respondents; Component 2: 200 respondents.

Estimated average burden hours per response: Component 1: 15 minutes; Component 2: 15 minutes.

Frequency of Response: 1 time per respondent.

Estimated annual reporting burden: 125 hours.

Comments are invited on: (1) The practical utility of the information being gathered; (2) the accuracy of the burden hour estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden to respondents, including use of automated information collection techniques or other forms of information technology. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from pubic view, we cannot guarantee that we will be able to do so.

Dated: February 11, 2008.

Leonard E. Stowe,

NPS, Information Collection Clearance Officer.

[FR Doc. 08–740 Filed 2–19–08; 8:45 am]

BILLING CODE 4312–60–M

DEPARTMENT OF THE INTERIOR

National Park Service

Availability of Draft Environmental Impact Statement and General Management Plan for Minuteman Missile National Historic Site, South Dakota

SUMMARY: Pursuant to Section 102(2)(C) of the National Environment Policy Act of 1969, 42 U.S.C. 4332(2)(c), the National Park Service (NPS) announces the availability of a draft Environmental Impact Statement and General Management Plan (EIS/GMP) for Minuteman Missile National Historic Site, South Dakota.

DATES: The draft EIS/GMP will remain available for public review for 60 days following the publishing of the notice of its availability in the **Federal Register** by the U.S. Environmental Protection Agency. Public meetings will be held during the 60-day review period. You may submit your comments by any one of several methods. You may comment via the Internet through the NPS Planning, Environment, and Public Comment Web site (*http://parkplanning.nps.gov*); simply click on the link to Minuteman Missile National Historic Site. You may mail comments to Superintendent Mark Herberger, Minuteman Missile National Historic Site, 21280 South Dakota Highway 240, Philip, South Dakota 57567. You may contact the Superintendent by telephone at 605–433–5552 or by fax at 605–433–5558. Finally, you may hand-deliver comments to the Minuteman Missile National Historic Site headquarters at the address above.

ADDRESSES: Copies of the draft EIS/GMP are available from Superintendent Mark Herberger, Minuteman Missile National Historic Site, 21280 South Dakota Highway 240, Philip, South Dakota 57567.

SUPPLEMENTARY INFORMATION: This GMP will guide the management of the Minuteman Missile National Historic Site for the next 25 years. The draft GMP considers four draft conceptual alternatives—a no-action and three-action alternatives, including the NPS preferred alternative. The draft document will also include the NPS's preferred location for the visitor/administrative facility.

The NPS preferred alternative would be to present the Delta facilities as symbols that commemorate the Cold War. In this alternative, Delta One would be restored to its active duty alert condition with many original furnishings and items still in place. Guided ranger shuttle tours would be required to access this facility. The Delta Nine facility would remain as it is today. This would be a self-guided experience with parking and interpretive information located nearby.

The draft EIS assesses impacts to cultural resources (archaeological resources, historic buildings and structures, cultural landscapes, ethnographic resources, and museum collections); natural resources (air quality, vegetation, and wildlife); visitor use and experience; socioeconomic environment; and park administration and operations.

FOR FURTHER INFORMATION CONTACT: Contact Superintendent, Minuteman Missile National Historic Site, at the address or telephone number above. Before including your address, telephone number, electronic mail address, or other personal identifying information in your comments, you should be aware that your entire comment (including your personal identifying information) may be made publicly available at any time. While

you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. We will make all submissions from organizations or businesses, from individuals identifying themselves as representatives or officials, or organizations or businesses available for public inspection in their entirety.

Dated: August 24, 2007.

Ernest Quintana,

Regional Director, Midwest Region.

EDITORIAL NOTE: This document was received at the Office of the Federal Register on February 14, 2008.

[FR Doc. 08–763 Filed 2–19–08; 8:45 am]

BILLING CODE 4312–AE–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Meeting of Concessions Management Advisory Board

SUMMARY: In accordance with the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770, 5 U.S.C. App 1, Section 10), notice is hereby given that the Concessions Management Advisory Board (the Board) will hold its 18th meeting March 12–13, 2008, at Embassy Suites Hotel, Washington, DC. The meeting will convene Wednesday, March 12 at 10 a.m. and will conclude at 4 p.m. The meeting will reconvene Thursday, March 13 at 9 a.m. and will conclude before 4 p.m.

ADDRESSES: The meeting will be held in DC Convention Center Embassy Suites Hotel, 900 10th Street, NW., Washington, DC 20001. Hotel phone number: (202) 719–1438.

SUPPLEMENTARY INFORMATION: The Board was established by Title IV, Section 409 of the National Parks Omnibus Management Act of 1998, November 13, 1998 (Pub. L. 105–391). The purpose of the Board is to advise the Secretary and the National Park Service on matters relating to management of concessions in the National Park System. The Board will meet at 10 a.m. Wednesday, March 12, and 9 a.m. on Thursday, March 13, for the regular business meeting and continued discussion on the following subjects:

- Presentations by National Park Hospitality Association
- Leasehold Surrender Interest Tracking Tool Update
- Concession Contracting Status Update and Regional Reports
- Revised Concession Annual Operational Review Forms
- Concession Facility Asset Management Update
- DO 35B—Utility Rates for Non-NPS Users
- Centennial Challenge Initiative Status
- Concession Program Training and Development Update
- Buy American Initiative
- Other business

The meeting will be open to the public, however, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come-first-served basis.

Assistance to Individuals With Disabilities at the Public Meeting

The meeting site is accessible to individuals with disabilities. If you plan to attend and will require an auxiliary aid or service to participate in the meeting (e.g., interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed in this notice at least 2 weeks before the scheduled meeting date. Attempts will be made to meet any request(s) we receive after that date, however, we may not be able to make the requested auxiliary aid or service available because of insufficient time to arrange for it.

Anyone may file with the Board a written statement concerning matters to be discussed. The Board may also permit attendees to address the Board, but may restrict the length of the presentations as necessary to allow the Board to complete its agenda within the allotted time. Such requests should be made to the Director, National Park Service, Attention: Manager, Concession Program, at least 7 days prior to the meeting. Draft minutes of the meeting will be available for public inspection approximately 6 weeks after the meeting, at the Concession Program office located at 1201 Eye Street, NW., 11th Floor, Washington, DC.

FOR FURTHER INFORMATION CONTACT: National Park Service, Concession Program, 1201 Eye Street, NW., Washington, DC 20240, Telephone: 202–13–7151.

Dated: February 13, 2008.

Daniel N. Wenk,

Deputy Director, National Park Service.

[FR Doc. E8–3132 Filed 2–19–08; 8:45 am]

BILLING CODE 4312–53–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—BioNanomatrix-Complete Genomics NIST ATP Joint Venture

Notice is hereby given that, on January 10, 2008 pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), BioNanomatrix-Complete Genomics NIST ATP Joint Venture has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the partes and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the identities of the parties to the venture are: BioNanomatrix, Inc., Philadelphia, PA; and Complete Genomics, Inc., Mountain View, CA. The general area of planned activity for BioNanomatrix-Complete Genomics NIST ATP Joint Venture is to research the feasibility of sequencing the entire human genome in less than 8 hours for less than $100 using breakthrough technology called Linear Imaging Sequence Analysis (LISA) which requires the use of a novel sequence interrogation chemistry developed from CGI's ligation sequencing chemistry combined with a novel nanofluidic biochip adapted from BNM's nanoanalyzer technology.

The activities of this venture project will be partially funded by an award from the Advanced Technology Program, National Institute of Standards and Technology, U.S. Department of Commerce under Award Number 70NANB7H7027.

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 08–755 Filed 2–19–08; 8:45 am]

BILLING CODE 4140–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Electronic Healthcare Network Accreditation Commission

Notice is hereby given that, on January 18, 2008, pursuant to Section

6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et. seq.* (''the Act''), Electronic Healthcare Network Accreditation Commission (''EHNAC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, EHNAC has expanded the scope of its standard setting activities in two new areas by initiating beta testing of two new accreditation programs *i.e.*, one accreditation program to assure compliance with the security and privacy controls and procedures of the Health Insurance Portability and Accountability Act (HIPAA) of 1996 for those entities that create, send and receive electronic transcription and coding information, which in many cases includes protected health information (PHI) under HIPAA; and the other accreditation program for Third Party Administrators and Medical Billers that electronically receive and process administrative and clinical data from providers, payers and employers regarding claims, eligibility and payment information, which data contains PHI and must comply with HIPAA regulations regarding privacy and security in addition to technical and infrastructure along with resource requirements.

On March 8, 2005, EHNAC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on May 12, 2005 (70 FR 25110).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 08–752 Filed 2–19–08; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant To The National Cooperative Research and Production Act of 1993—National Center For Manufacturing Sciences, Inc.

Notice is hereby given that, on November 14, 2007, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et. seq.* (''the Act''), National Center for Manufacturing Sciences, Inc. (''NCMS'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Anautics, Inc., Oklahoma City, OK; Aspire Solutions, Inc., Fayetteville, AR; Black & Rossi, LLC, The Woodlands, TX; Northern Illinois University, Naperville, IL and Toyota Motor Engineering & Manufacturing North America, Inc., Ann Arbor, MI have been added as parties to this venture. Also, City Machine Tool and Die Co., Inc., Muncie, IN; Indiana Business Modernization and Technology Corporation, Indianapolis, IN; Intrepid Solution, LLP, The Woodlands, TX; Kettering University, Flint, MI; Monode Marking Products, Inc., Mentor, OH; Software Productivity Consortium NFP, Inc., Herndon, VA; and Wisconsin Department of Development, Madison, WI have withdrawn as parties to this venture.

In addition, BiODE, Inc. has changed its name to Vectron International, Westbrook, ME and Cincinnati Lamb to Cincinnati Machine, LLC, Hebron, KY.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NCMS intends to file additional written notification disclosing all changes in membership.

On February 20, 1987, NCMS filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 17, 1987 (52 FR 8375).

The last notification was filed with the Department of Justice on July 24, 2007. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on August 27, 2007 (72 FR 49017).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 08–756 Filed 2–19–08; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Technical Innovations Enabling a New Direct Wind Turbine Generator, ATP Award No. 70NANB7H7055

Notice is hereby given that, on October 19, 2007, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et. seq.* (''the Act''), Technical Innovations Enabling a New Direct Drive Wind Turbine Generator, ATP Award No. 70NANB7H7055 has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties are American Superconductor Corporation, Westborough, MA and TECO-Westinghouse Motor Company, Round Rock, TX. The nature and the objectives of the venture are: to open up the possibility of large direct-drive generators and, in particular, the realization of very large offshore wind turbines.

The activities of this venture project will be partially funded by an award from the Advanced Technology Program, National Institute of Standards and Technology, U.S. Department of Commerce.

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 08–754 Filed 2–19–08; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to The National Cooperative Research and Production Act of 1993—Terapics-Joint Venture Under ATP Award No. 70NANB7H7044

Notice is hereby given that, on October 29, 2007, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et. seq.* (''the Act''), Terapics-Joint Venture under ATP Award No. 70NANB7H7044 has filed

written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties are CyOptics Inc., Breinigsville, PA; and Kotura Inc., Monterey Park, CA. The nature and objectives of the venture are: to conduct joint research on Terabit Photonic Integrated Circuits (TERAPICS), the next generation of fiber optic components for very high speed interconnects.

The activities of this venture project will be partially funded by an award from the Advanced Technology Program, National Institute of Standards and Technology, U.S. Department of Commerce.

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 08–753 Filed 2–19–08; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Extension of the Approval of Information Collection Requirements

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning its proposal to extend OMB approval of the information collection: Rehabilitation Action Report (OWCP–44). A copy of the information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before April 21, 2008.

ADDRESSES: Mr. Steven M. Andoseh, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0373, fax (202) 693–1451, *E-mail andoseh.steven@dol.gov.* Please use only one method of transmission for comments (mail, fax, or E-mail).

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Workers' Compensation Programs (OWCP) administers the Federal Employees' Compensation Act (FECA) and the Longshore and Harbor Workers' Compensation Act (LHWCA). These acts provide vocational rehabilitation services to eligible workers with disabilities. Section 8104(a) of the FECA and § 939(c) of the LHWCA provide that eligible injured workers are to be furnished vocational rehabilitation services, and § 8111(b) of the FECA and § 908(g) of the LHWCA provide that persons undergoing such vocational rehabilitation receive maintenance allowances as additional compensation. Form OWCP–44 is used to collect information necessary to decide if maintenance allowances should continue to be paid. Form OWCP–44 is submitted to OWCP by contractors hired to provide vocational rehabilitation services. Form OWCP–44 gives prompt notification of key events that may require OWCP action in the vocational rehabilitation process. This information collection is currently approved for use through September 30, 2008.

II. Review Focus

The Department of Labor 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 submissions of responses.

III. Current Actions

The Department of Labor seeks the approval for the extension of this currently approved information collection in order to ascertain the status of a rehabilitation case and to expedite adjudicatory claims action based on events arising from a rehabilitation effort.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Rehabilitation Action Report.

OMB Number: 1215–0182.

Agency Number: OWCP–44.

Affected Public: Businesses or other for-profit; State, Local, or Tribal Government.

Total Respondents: 7,000.

Total Annual Responses: 7,000.

Estimated Total Burden Hours: 1,169.

Time per Response: 10 minutes.

Frequency: On occasion.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.00.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: February 14, 2008.

Hazel M. Bell,

Acting Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning Employment Standards Administration.

[FR Doc. E8–3117 Filed 2–19–08; 8:45 am]

BILLING CODE 4510–CR–P

NUCLEAR REGULATORY COMMISSION

DEPARTMENT OF ENERGY

[Docket No. PAPO–001; ASLBP No. 08–861–01–PAPO–BD01]

Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 13, 2007, contained in Staff Requirements Memorandum COMSECY–07–0030, and the Commission's regulations, see 10 CFR 1.15, 2.1000, and 2.1010, this Atomic Safety and Licensing Board is being established to act as an Advisory Pre-License Application Presiding Officer Board (Advisory PAPO Board) to

obtain input and suggestions from parties and potential parties on the broad range of procedural matters expected to arise from, and associated case management requirements that could be imposed in, any adjudication regarding an application by the Department of Energy (DOE) for authorization to construct a high-level waste (HLW) repository at Yucca Mountain, Nevada. Following receipt of input and suggestions—and, to the extent practicable, prior to or contemporaneously with the tendering of an application for construction authorization by DOE for a HLW repository—the Advisory PAPO Board will submit its proposed case management language to the Commission for possible inclusion in the Commission's notice of opportunity to request a hearing and order governing the hearing process regarding the DOE application.[1]

The Advisory PAPO Board is comprised of the following administrative judges:

Thomas S. Moore, Chair, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

G. Paul Bollwerk, III, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

E. Roy Hawkens, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

All correspondence, documents, and other materials shall be filed with the administrative judges in accordance with 10 CFR 2.1010(d).

Issued at Rockville, Maryland, this 13th day of February 2008.

E. Roy Hawkens,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. E8–3098 Filed 2–19–08; 8:45 am]

BILLING CODE 7590–01–P

[1] In accordance with the July 2004 notice establishing an Atomic Safety and Licensing Board to consider Licensing Support Network (LSN)-related matters, *see* 69 FR 42,218 (July 14, 2004), unless and until additional licensing boards or other presiding officers are appointed to rule on individual pre-license application phase issues, or classes of issues, relating to the LSN, all requests for Pre-License Application Presiding Officer consideration of LSN-related problems should continue to be submitted to that Licensing Board.

NUCLEAR REGULATORY COMMISSION

Interim Staff Guidance; Probabilistic Risk Assessment Information To Support Design Certification and Combined License Applications; Solicitation of Public Comment

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Solicitation of public comment.

SUMMARY: The NRC is soliciting public comment on its Proposed Interim Staff Guidance COL/DC–ISG–003. This interim staff guidance (ISG) supplements the guidance provided to the staff in Section 19.0, ''Probabilistic Risk Assessment and Severe Accident Evaluation for New Reactors,'' of NUREG–0800, ''Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants'' (SRP), concerning the review of probabilistic risk assessment (PRA) information and severe accident assessment submitted to support design certification (DC) and combined license (COL) applications. Upon receiving public comments, the NRC staff will evaluate and disposition the comments, as appropriate. Once the NRC staff completes the COL/DC–ISG, it will issue the same for NRC and industry use. The NRC staff will also incorporate the approved COL/DC–ISG–003 into the next revision of the SRP and related guidance documents.

DATES: Comments must be filed no later than 30 days from the date of publication of this notice in the **Federal Register**. Comments received after this date will be considered, if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: *Comments may be submitted to:* Chief, Rulemaking, Directives, and Editing Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC, 20555–0001.

Comments should be delivered to: 11545 Rockville Pike, Rockville, Maryland, Room T–6D59, between 7:30 a.m. and 4:15 p.m. on Federal workdays. Persons may also provide comments via e-mail to Lynn Mrowca at *lxm4@nrc.gov*. The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by e-mail at *pdr@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Ms. Lynn Mrowca, Chief, PRA Licensing, Operations Support & Maintenance Branch 1, Division of Safety Systems and Risk Assessment, Office of the New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC, 20555–0001; telephone 301–415–0525 or e-mail at *lxm4@nrc.gov.*

SUPPLEMENTARY INFORMATION: The agency also posts its issued staff guidance in the agency external Web page (*http://www.nrc.gov/reading-rm/doc-collections/isg/*).

The NRC staff is issuing this notice to solicit public comments on the proposed COL/DC–ISG–003. After the NRC staff considers any public comments, it will make a determination regarding the proposed COL/DC–ISG–003.

Dated at Rockville, Maryland, this 12th day of February 2008.

For the Nuclear Regulatory Commission.

William D. Reckley,

Branch Chief, Rulemaking, Guidance and Advanced Reactors Branch, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. E8–3095 Filed 2–19–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Federal Register Notice

DATE: Weeks of February 18, 25, March 3, 10, 17, 24, 2008.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Matters to be Considered:

Week of February 18, 2008

Tuesday, February 19, 2008

10:30 a.m. Meeting with the National Academies Radiation Source Use and Replacement Study Committee (Closed—Ex. 1).

Wednesday, February 20, 2008

9:30 a.m. Periodic Meeting on New Reactor Issues, Part 1 (Public Meeting) (Contact: Donna Williams, 301–415–1322).

This meeting will be Web cast live at the Web address—*http://www.nrc.gov.*

1:25 p.m. Affirmation Session (Public Meeting) (Tentative). a. Final Rule—10 CFR Part 73 ''Safeguards Information Protection Requirements'' (RIN 3150–AH57) (Tentative).

This meeting will be Web cast live at the Web address—*http://www.nrc.gov.*

1:30 p.m. Periodic Meeting on New Reactor Issues, Part 2 (Public Meeting) (Contact: Donna Williams, 301–415–1322).

This meeting will be Web cast live at the Web address—*http://www.nrc.gov.*

Week of February 25, 2008—Tentative

There are no meetings scheduled for the Week of February 25, 2008.

Week of March 3, 2008—Tentative

There are no meetings scheduled for the Week of March 3, 2008.

Week of March 10, 2008—Tentative

There are no meetings scheduled for the Week of March 10, 2008.

Week of March 17, 2008—Tentative

Tuesday, March 18, 2008

9:30 a.m. Briefing by Independent External Panel to Identify Vulnerabilities in the U.S. NRC's Materials Licensing Program (Public Meeting) (Contact: Aaron T. McCraw, 301–415–1277).

This meeting will be Web cast live at the Web address—*http://www.nrc.gov.*

Week of March 24, 2008—Tentative

There are no meetings scheduled for the Week of March 24, 2008.

* * * * *

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Michelle Schroll, (301) 415–1662.

* * * * *

Additional Information

The Discussion of Security Issues (Closed—Ex. 1) scheduled for Monday, February 11, 2008, was cancelled.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify the NRC's Disability Program Coordinator, Rohn Brown, at 301–492–2279, TDD: 301–415–2100, or by e-mail at *REB3@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: February 14, 2008.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. 08–780 Filed 2–15–08; 11:18 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[IA–07–025]

In the Matter of Mr. Juan Blanco; Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)

I

Mr. Juan Blanco was employed as a security officer by The Wackenhut Corporation, which provided security services at Florida Power & Light Company's Turkey Point Nuclear Plant (Licensee) during April 2005 through February 2006. Licensee is the holder of License No. DPR–31 and DPR–41, issued by the Nuclear Regulatory Commission (NRC or Commission) on July 19, 1972, and April 10, 1973, respectively, pursuant to 10 CFR Part 50. The license authorizes the operation of Turkey Point Nuclear Plant (facility) in accordance with the conditions specified therein. The facility is located on the Licensee's site in Florida City, Florida.

II

On February 16, 2006, the NRC initiated an Augmented Inspection Team on-site inspection to review security-related matters at the facility. Subsequently, an investigation was initiated by the NRC's Office of Investigations (OI) during February 2006, in response to concerns identified by the NRC during the on-site inspection. During the inspection and investigation in February 2006, Mr. Juan Blanco admitted during an NRC Office of Investigations (OI) interview that during a previous interview with OI in April 2005, he provided a statement that was not complete and accurate. Specifically, Mr. Blanco stated to OI in April 2005 that he had no knowledge of an incident involving the removal of two firing pins from contingency response weapons. However, in a February 2006 interview with OI, Mr. Juan Blanco admitted that he was shown the firing pins after the pins were removed from the weapon by the security officer who removed the pins. In addition, Mr. Blanco failed to report information to FPL or Wackenhut that was adverse to the safety and security of the facility, as required by the FPL Behavior Observation Program. Specifically, Mr. Blanco failed to report that firing pins had been removed from contingency weapons that were considered serviceable by FPL.

As a result, Mr. Juan Blanco's actions were determined to be in violation of 10 CFR 50.5(a)(2), which states, in part, that an employee of a contractor may not deliberately submit to the NRC, a licensee, or a licensee's contractor, information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC.

III

Based on the above, the NRC concluded that Mr. Juan Blanco, a former employee of The Wackenhut Corporation, has engaged in deliberate misconduct in violation of 10 CFR 50.5(a)(2). The NRC must be able to rely on the Licensee, its contractors, and its employees to comply with NRC requirements. Mr. Juan Blanco's deliberate action in violation of 10 CFR 50.5(a)(2), has raised serious doubt as to whether he can be relied upon to comply with NRC requirements.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected, and that common defense and security will be achieved if Mr. Juan Blanco were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Mr. Blanco be prohibited from any involvement in NRC-licensed activities for a period of three years from the date of this Order. Additionally, Mr. Juan Blanco is required to notify the NRC of his first employment in NRC-licensed activities for a period of one year following the prohibition period. Furthermore, pursuant to 10 CFR 2.202,

I find that the significance of Mr. Juan Blanco's conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 103, 104b, 161b, 161i, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 50.5, and 10 CFR 150.20, *it is hereby ordered, effective immediately, that*:

1. Mr. Juan Blanco is prohibited for three years from the date of this Order from engaging in NRC-licensed activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

2. If Mr. Juan Blanco is currently involved with another licensee in performing NRC-licensed activities, he must immediately cease those activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this order to the employer.

3. For a period of one year after the three year period of prohibition has expired, Mr. Juan Blanco shall, within 20 days of acceptance of his first employment offer involving NRC-licensed activities or his becoming involved in NRC-licensed activities, as defined in Paragraph IV.1 above, provide notice to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in NRC-licensed activities. In the notification, Mr. Juan Blanco shall include a statement of his commitment to compliance with regulatory requirements and the basis for why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Director, OE, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Juan Blanco of good cause.

V

In accordance with 10 CFR 2.202, Mr. Juan Blanco must, and any other person adversely affected by this Order may, submit an answer to this Order within 20 days of its issuance. In addition, Mr. Juan Blanco and any other person adversely affected by this Order may request a hearing on this Order within 20 days of its issuance. 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 directed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, and include a statement of good cause for the extension.

A request for a hearing must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in August, 2007, 72 FR 49,139 (Aug. 28, 2007). The E-Filing process requires participants to submit and serve documents over the Internet or, in some cases, to mail copies on electronic optical 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 five (5) days prior to the filing deadline the requestor must contact the Office of the Secretary by e-mail at *HEARINGDOCKET@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 also is 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, it can then submit a request for a hearing through EIE. Submissions should be in Portable Document Format (PDF) 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. Upon 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 a digital ID certificate before a hearing request is filed so that they may obtain access to the document 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 a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing 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 upon 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 person other than Mr. Juan Blanco requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d).

If a hearing is requested by Mr. Juan Blanco or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearings. 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 2.202I(2)(i), Mr. Juan Blanco, or any other person adversely affected by this Order, may, in addition to demanding 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 ground 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 specified in Section IV above shall be final 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 specified in Section IV 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.*

For the Nuclear Regulatory Commission.

Dated this 11th day February 2008.

Cynthia A. Carpenter,

Director, Office of Enforcement.

[FR Doc. E8–3104 Filed 2–19–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–012; 52–014]

South Texas Project Nuclear Operating Co.; South Texas Project Units 3 and 4, Order

The Commission is issuing a Notice Withdrawing the Hearing Notice Regarding the Application for a Combined Operating License for South Texas Project Units 3 and 4. This has the effect of indefinitely postponing the deadline by which petitions to intervene must be filed. The Commission will republish a notice of opportunity for hearing on the Application when the staff is informed, as requested in its January 30, 2008, correspondence to Mr. Mark Burnett, Vice President Regulatory Affairs, that South Texas Nuclear Operating Company is prepared to support a review of the complete COL Application. The Petitions to Suspend the Hearing Notice Regarding the Application for a Combined License for South Texas Project Units 3 and 4 filed by the Sustainable Energy and Economic Development Coalition (''SEED Coalition''), the Nuclear Information and Resource Service, Inc. (''NIRS''), Beyond Nuclear, Inc. and the Sierra Club, Inc., on February 8, 2008, and filed by the Southwest Workers Union, on February 11, 2008, are thereby rendered moot.

This Order is issued pursuant to my authority under 10 CFR 2.346(a).

It is so ordered.

Dated at Rockville, Maryland this 13th day of February 2008.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. E8–3199 Filed 2–19–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Strategic Plan for Fiscal Years 2008–2013, NUREG–1614, Volume 4; Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission (NRC) is announcing the availability of NUREG–1614, Volume 4, ''U.S. Nuclear Regulatory Commission, FY 2008–2013 Strategic Plan,'' dated February, 21, 2008.

FOR FURTHER INFORMATION CONTACT: Tamara Trocki, Division of Planning, Budget, and Analysis, Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; Telephone 301–415–7439.

ADDRESSES: NUREG–1614, Volume 4, and other publicly available documents related to this notice are available for electronic viewing on public computers in the NRC's Public Document Room (PDR), at One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR's reproduction services contractor will provide copies of publicly available documents for a fee.

Publicly available documents related to this notice, including public comments received, are also available electronically through the NRC's Electronic Reading Room at *http://www.nrc.gov/NRC/reading-rm/adams.html*. From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If there are problems in accessing the documents located in ADAMS, contact the (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *PDR@nrc.gov*.

A free single copy of NUREG–1614, Volume 4, to the extent of availability, may be requested by writing to the Office of the Chief Information Officer, Reproduction and Distribution Services Section, U.S. Nuclear Regulatory Commission, Printing and Graphics Branch, Washington, DC 20555–0001.

Some publications in the NUREG series available through the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/doc-collections* are updated regularly and may differ from the last printed version.

SUPPLEMENTARY INFORMATION: The NRC has developed a new strategic plan for FY 2008–2013 that updates the agency's current strategic plan. The Strategic Plan for Fiscal Years 2008–2013 describes the strategies and means by which the NRC intends to accomplish its mission, which is to ''license and regulate the Nation's civilian use of byproduct, source, and special nuclear materials to ensure adequate protection of public health and safety, promote the common defense and security, and protect the environment.''

The Strategic Plan for Fiscal Years 2008–2013 has two goals: Safety and Security. The agency's safety goal is to ensure adequate protection of public health and safety and the environment. Specific strategies are identified in the strategic plan to achieve the agency's safety strategic outcomes: prevent the occurrence of reactor accidents, inadvertent criticality events, releases of radioactive materials that result in significant radiation exposures, fatalities or adverse environmental impacts.

The agency's Security goal is to ensure adequate protection in the secure use and management of radioactive materials. To achieve this goal, specific strategies are identified in the strategic plan to achieve the agency's security strategic outcome to prevent any instances where licensed radioactive materials are used domestically in a manner hostile to the United States.

In addition to these two strategic goals, the agency has three Organizational Excellence Objectives:

Openness, Effectiveness, and Operational Excellence. These objectives support the agency's activities to achieve its Safety and Security goals as well as to function as a strong, independent, stable, and predictable regulator.

The final version of NUREG–1614, Volume 4, will be released on February 15, 2008.

Dated at Rockville, Maryland, this 13th day of February, 2008.

For the Nuclear Regulatory Commission.

Leslie W. Barnett,

Director, Division of Planning, Budget, and Analysis, Office of the Chief Financial Officer.

[FR Doc. E8–3091 Filed 2–19–08; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. R2008–1; Order No. 59]

Administrative Practice and Procedure; Postal Service

AGENCY: Postal Regulatory Commission.

ACTION: Notice and order.

SUMMARY: The Commission is conducting a formal review of the Postal Service's planned rate adjustments for essentially all products in the market dominant category, which includes the First-Class stamp, and limited classification revisions. The adjustments are based on a statutory price cap. A public comment period extends through March 3, 2008. This will be followed by a Commission determination on the consistency of the adjustments with certain considerations. The new rates and the classification revisions are expected to take effect May 12, 2008.

DATES: March 3, 2008: Deadline for public comments.

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:

Regulatory History

1. 72 FR 63662 (November 9, 2007).
2. 72 FR 64155 (November 15, 2007).
3. 73 FR 6426 (February 4, 2008).

I. Overview

A. Background

On February 11, 2008, the United States Postal Service (Postal Service) filed with the Postal Regulatory Commission (Commission) a document captioned United States Postal Service Notice of Price Adjustment (Adjustment Notice).[1] This document was filed pursuant to 39 U.S.C. 3622(d)(1)(C) and part 3010 of the Commission's Rules of Practice and Procedure. It announces the Postal Service's intention to adjust rates for all products in its market dominant business category on May 12, 2008, in amounts that are, on average, within a 2.9 percent statutory price cap for each class. The Commission notes that the average change, in some instances, includes significant percentage changes within a class. Moreover, in limited situations, prices for some products in some classes do not change.

The Adjustment Notice also addresses several limited classification revisions affecting single-piece domestic International Mail and identifies a limited classification change affecting Periodicals. The International Mail changes are largely designed to mirror the domestic structure. The Periodicals change reflects a provision in the Postal Accountability and Enhancement Act of 2006 (PAEA) extending a rate preference to certain mailers.

B. Context

The filing of the Adjustment Notice marks the first instance in which the Postal Service is exercising its authority, under the PAEA and related Commission rules, to make an annual adjustment in rates for products in the market dominant category under a new streamlined, index-based approach. The market dominant product category is one of two business lines established in the PAEA. It includes First-Class Mail letters and sealed parcels; First-Class Mail cards; Periodicals; Standard Mail; Single-piece Parcel Post; Media Mail; Bound Printed Matter; Library Mail; Special Services; and Single-piece International Mail. 39 U.S.C. 3621. The other line is the Competitive Products category, which includes Priority Mail; Expedited Mail; Bulk Parcel Post; Bulk International Mail; and Mailgrams.[2] 39 U.S.C. 3631. Rate and fee adjustments for each business category are governed by different procedures.

C. Statutory Price Cap

The statutory price cap is a new mechanism for adjusting rates for market dominant products, and a key element in the new process for changing postal rates established pursuant to the PAEA. It represents a weighted annual increase in the CPI–U for the past 12 months, calculated under Commission rules implementing the PAEA.[3] The price cap was expressly adopted in the PAEA and, in conjunction with a short review period, replaces a much longer, more litigious, trial-type ratemaking approach that was in place since 1970.

II. Impact on Mailers

Summary. The planned adjustments, summarized in terms of percentage change at the class level, are: First-Class Mail, 2.889 percent; Standard Mail, 2.875 percent; Periodicals, 2.710 percent; Package Services, 2.876 percent; and Special Services, 2.848 percent. Each percentage is below the statutory price cap. Adjustment Notice at 5.

The First-Class stamp. The planned change in the First-Class postage stamp, which is widely used by the general public for eligible mail weighing an ounce or less, is an increase of 1 cent. This raises the rate from its current level of 41 cents to 42 cents. For the second ounce of First-Class single-piece mail, the planned rate goes from 58 cents to 59 cents, on the same basis. *Id.* at 3; Appendix A at 1.

The Forever Stamp. As a result of Docket No. R2006–1, the Postal Service introduced a First-Class Mail ''Forever Stamp.'' The price of this stamp at the time of its introduction was 41 cents, which equated to the Docket No. R2006–1 price for the first ounce of single-piece First Class Mail. This stamp will continue to be sold for 41 cents until May 12, 2008, and will cover postage for mailing single-piece First-Class Mail even after the anticipated price increase to 42 cents on May 12, 2008. However, on and after May 12, under the planned adjustments, a new purchase of a Forever Stamp will be at the 42-cent rate. These stamps, like the original issue, will continue to cover the mailing of one-ounce single-piece First-Class Mail, regardless of future increases in the underlying rate.

III. Unused Rate Adjustment Authority

The Postal Service notes that it has no unused rate adjustment authority available for use in this price change. It further states that while it was its

[1] *See also* United States Postal Service Notice of Filing Supplement to Appendix A, *New Prices and Fees,* to Notice of Market-Dominant Price Adjustment (February 12, 2008) *Errata,* February 12, 2008 (Errata). The Errata supplies price charts that were missing from Appendix A in the Postal Service's February 11, 2008 filing for seven non-ancillary special services. The section in this notice on special services provides further details.

[2] Mailgram service was terminated on August 17, 2006. *See Postal Bulletin* 22192, October 26, 2006, at 5.

[3] The references to CPI–U is to the Department of Labor's Consumer Price Index for All Urban Consumers.

general intent to fully use its authority under the cap in this price change, it has not met the cap percentage precisely. It attributes this largely to the effect of rounding. *Id.* at 5. Accordingly, the Postal Service states that it is banking the residual amount below 2.9 percent for each class in accordance with the following schedule:

TABLE III–1

Class	Percent change
First-Class Mail	0.011
Standard Mail	0.025
Periodicals	0.190
Package Services	0.024
Special Services	0.052

Id. at 5 (footnote omitted).

IV. Consistency of Adjustment Notice with Commission Rules

Relationship of streamlined procedures to intended implementation date. Commission rules implementing the PAEA require the Postal Service to file notice of its intention to adjust market dominant rates at least 45 days prior to the intended implementation date. The Commission notes, in this instance, that the Postal Service is providing more than the minimum amount of notice, given that the anticipated effective date is May 12, 2008.

V. Commission Action

In Docket No. RM2007–1, the Commission developed a set of procedures to carry out its review of an Adjustment Notice in accordance with the PAEA and pertinent provisions of the Administrative Procedure Act. Pursuant to these procedures, the filing of an Adjustment Notice triggers a requirement that the Commission establish a formal docket to review the consistency of the planned adjustments with regulations that subsume legal provisions, policy issues, and technical matters. Requirements related to public notice, official publication, public representation, a public comment period, and other matters also attach to the review.

The Commission takes several steps at this time in conformance with these requirements. First, it has posted the Postal Service's Adjustment Notice on its Web site, *http://www.prc.gov.* It also has made the Adjustment Notice available for copying and inspection during regular business hours (8 a.m. to 4:30 p.m.) at the Commission, 901 New York Avenue, NW., Suite 200, Washington, DC 20268–0001. Any subsequent Postal Service filings in this docket, along with any written comments and filings by others, also will be posted on the Commission's Web site and made available for public inspection and copying at the Commission during regular business hours.

Second, the Commission establishes the requisite formal docket, captioned Docket No. R2008–1, Notice of Price Adjustment, to conduct its mandatory review of the Postal Service's planned rate adjustments. It notes that this review is conducted under the legal authority of 39 U.S.C. 3622.

The Commission's intention is to conduct this review by bringing its judgment to bear on the basis of the material presented in the Adjustment Notice, the objectives, factors and requirements of the PAEA, including referenced postal policies, Commission rules, and public comments.

Third, the Commission issues this notice addressing the Adjustment Notice and related matters, in conformance with § 3010.13. It also directs the Secretary of the Commission to arrange for prompt publication of this notice and order in the **Federal Register**. It appoints Kenneth E. Richardson to represent the interests of the general public in conformance with § 3010.13(a)(4).

Public comment period; focus of comments. The Commission designates a 20-day comment period starting from the date of the filing of the Adjustment Notice in conformance with § 3010.13(a)(5). By operation of Commission § 3001.15 on computation of time, the comment period, which otherwise would end on March 2, 2008, extends through close of business on March 3, 2008. Section 3010.13(b) provides that public comments should focus primarily on whether planned rate adjustments comply with the following mandatory requirements of 39 U.S.C. chapter 36, subchapter I:

(1) Whether the planned rate adjustments measured using the formula established in rule 3010.23(b) are at or below the annual limitation established in rule 3010.11; and

(2) Whether the planned rate adjustments measured using the formula established in rules 3010.23(b) are at or below the limitations established in rule 3010.28.

Method for filing comments. The formal intervention process set out in the Commission's rules does not apply in this type of docket. Instead, interested persons are to submit comments electronically via the Commission's Filing Online system. The Commission will provide assistance to anyone not familiar with this method of filing. Those seeking assistance should contact either the docket section at 202–789–6846 or Kenneth E. Richardson, the officer of the Commission in this case, at 202–789–6859.

Additional procedural steps; timetable. Section 39 CFR 3010.13(c) provides that the Commission, within 14 days of the conclusion of the public comment period will determine, at a minimum, whether the planned rate adjustments are consistent with the annual limitation set forth in 39 CFR 3010.11; the limitations set forth in 39 CFR 3010.28; and 39 U.S.C. 3626, 3627 and 3629, and issue an order announcing its findings. In this instance, the deadline for the Commission's determination is March 17, 2008. If the planned rate adjustments are found consistent with applicable law by the Commission, they may take effect pursuant to appropriate action by the Postal Service Governors. In the event the Commission determines that planned rate adjustments are not consistent with applicable considerations, additional procedures apply. *See* 39 CFR 3010.13(c) through 3010.13(i).

VI. Summary of Contents of Postal Service Adjustment Notice

Background. Commission rule 39 CFR 3010.14 requires the Postal Service to include certain explanatory and supporting information in each Adjustment Notice, but leaves organization of the notice and presentation of the requisite material to the discretion of the Postal Service. The purpose of the information the Postal Service provides is to facilitate expeditious review of the consistency of the Adjustment Notice with pertinent considerations.

Organization of Adjustment Notice. The Adjustment Notice in this docket consists of an introductory section; three sections designated as parts; four appendices; six attachments; a request for confidential treatment for certain International Mail data; and a conditional motion for waiver.[4]

Introductory section. The Postal Service identifies the planned effective date as May 12, 2008, in conformance with 39 CFR 3010.14(a)(2), in the general introduction. It also represents, in conformance with the notice requirements of 39 CFR 3010.14(a)(3), that it will issue public notice of the planned rate changes at least 45 days before the effective date via several means in addition to its Adjustment Notice. Specifically, it states that this includes issuing notice of the price changes, on the same day of its filing with the Commission, on the Postal

[4] *See* Adjustment Notice at 1 and 4.

Service's Web site (*http://www.usps.com*), the Postal Explorer Web site (*http://www.pe.usps.com*), the *DMM* [*Domestic Mail Manual*] *Advisory*, and the *P&C* [*Producers and Consumers*] *Weekly;* and a press release announcing the changes. The Postal Service also states that it plans to provide public notice of the price changes in future issues of the *PCC* [*Postal Customer Council*] *Insider, MailPro* (March/April issue) and the *Postal Bulletin. Id.* at 1–2.

The Postal Service identifies Joseph D. Moeller, Manager of Pricing, as the Postal Service official who will be available to provide prompt responses to requests for clarification from the Commission. In the remainder of the Adjustment Notice, it provides supporting technical information and justifications, including workpapers where applicable. 39 CFR 3010.13(a)(1), 3010.13(a)(3), 3010.13(a)(4), and 3010.14(b). *Id.*

Part I. The Postal Service represents that the material presented in Part I, captioned Price Cap Compliance, complies with 39 CFR 3010.14(b)(1) through (4) by identifying the amount of the applicable price cap; the percentage change in prices for each class of mail; the amount of any unused rate (price) adjustment authority available for each class of mail; and the amount of any unused rate adjustment authority generated by this price change. *Id.* at 5. It notes that the instant price change, in its view, does not include any ''new workshare discounts'' within the meaning of § 3010.14(c). *Id.* at 5–6 and 6, n.7.

Part II. The Postal Service represents that the material presented in Part II, captioned Description of the Prices, responds to 39 CFR 3010.14(b)(7) and (8). These rules require the Postal Service to discuss how the planned price ''help achieve'' the objectives of 39 U.S.C. 3622(b) and ''properly take into account'' the factors of 39 U.S.C. 3622(c); and how the planned prices are consistent with 39 U.S.C. 3626, 3627 and 3629.

Part III. The Postal Service represents that Part III, captioned MCS [Mail Classification Schedule] Product Description Changes, responds to the requirement in 39 CFR 3010.14(b)(9) that the instant notice include all the changes to the product descriptions within the MCS that are necessitated by the planned rate adjustments. *Id.* at 37. These changes use the draft MCS submitted by the Postal Service on September 24, 2007, as supplemented on November 20, 2007, as a base. *Id.*

Appendices. The Adjustment Notice is accompanied by four appendices. The appendices are identified as Appendix A, New Prices and Fees; Appendix B, Worksharing Passthrough Tables; Appendix C, Changes to (Proposed) Mail Classification Schedule Language; and Appendix D, Price Cap Calculation.

Attachments. The attachments consist of workbooks the Postal Service has prepared demonstrating how the prices identified in the appendices comply with the price cap. The five public attachments are identified as USPS–R2008–1/1: First-Class Mail Cap Compliance; USPS–R2008–1/2: Standard Mail Cap Compliance; USPS–R2008–1/3: Periodicals Cap Compliance; USPS–R2008–1/4: Package Services Cap Compliance; and USPS–R2008–1/5: Special Services Cap Compliance. The non-public attachment is identified as USPS–R2008–1/NP1: Inbound Single-Piece First-Class Mail International—Letter-Post (Input to Attachment USPS–R2008–1/1). In support of its request for confidential treatment for this appendix, the Postal Service invokes 39 U.S.C. 410(c)(2).

Conditional motion for waiver. The Postal Service observes, in a footnote to its Adjustment Notice, that it believes that it has complied with all requirements in the Commission's rules; however, to the extent that the Commission concludes otherwise, it moves for a waiver. *Id.* at 1.

VII. Class-Specific Summary of Price Adjustments

A. First-Class Mail

The Postal Service identifies six First-Class Mail products: Single-piece Letters/Postcards, Presorted Letters/Postcards, Flats, Parcels, Outbound Single-Piece First-Class Mail International, and Inbound Single-piece First-Class Mail International. The planned price changes for these products, in percentage terms, range from 1.93 percent to 3.55 percent. Product-specific changes appear in the following table.

TABLE VII–1

Product	Percent change
Single-Piece Letters & Cards	2.50
Presort Letters & Cards	3.55
First-Class Flats	1.93
First-Class Parcels	2.18
International	*3.09
Overall	2.889

*This includes Inbound and Outbound Single-Piece First-Class Mail International.

Id. at 13.

The Postal Service states that a major driver of the overall increase for First-Class Mail is the price of a stamp for one-ounce, single-piece letters. It plans to increase this price by 1 cent (2.44 percent), which is slightly less than CPI. This increase also reflects the integer (cent) rounding constraint traditionally applied to this price. The Postal Service notes that as a result, the presort letters/postcard product has a modest above-the-cap increase. *Id.*

Recognition of shape. The Postal Service states that it has only modestly increased the recognition of shape in First-Class Mail flats and parcels on a per-piece basis, given recent large increases for those shapes in Docket No. R2006–1. *Id.*

Nonmachinable surcharge. The Postal Service states that it has set the nonmachinable surcharge for single-piece and non-automation presort letters at 20 cents to increase recognition of nonmachinability in prices. *Id.*

B. Standard Mail

The Postal Service identifies six Standard Mail products: Letters; Flats; Parcels and Not-Flat Machinables (NFMs); High Density and Saturation Letters; High Density and Saturation Flats and Parcels; and Carrier Route Letters, Flats, and Parcels. The planned price changes for these products, in percentage terms, range from 0.86 percent to 9.66 percent. Product-specific changes appear in the following table.

TABLE VII–2

Product	Percent change
Letters	3.39
Flats	0.86
Parcels and NFMs	9.66
High Density/Saturation Letters	1.66
High Density/Saturation Flats and Parcels	2.09
Carrier Route Letters, Flats and Parcels	2.99
Overall	2.875

Id. at 15.

The Postal Service states the price changes for the Letters and Flats products reflect its decision to moderate increases for catalog and other flats mailers due to the large price increases they experienced last year. It explains that to moderate price increases for flats, it has increased prices for letters by slightly more than the cap. The prices for flats increase by less than the increase in CPI–U (0.86 percent). The Postal Service says that when combined with the change for carrier route, which increases by 2.99 percent, flats as a whole increase by 1.67 percent. *Id.*

The Postal Service also asserts that it is reducing the flats pound price slightly

in absolute terms to provide some additional relief for catalogs. It notes that in some instances, more highly presorted catalogs weighing more than the break point will experience modest price reductions. *Id.* at 15–16. The Postal Service maintains that by lowering the marginal cost of adding pages, the pound price reduction will also encourage catalog mailers to add content to their catalogs. *Id.* at 16.

Standard Mail parcels. The Postal Service notes that Standard Mail parcels experience relatively large price increases, reflecting the higher costs of processing compared to other shapes. It says this ''will help bolster their contribution.'' *Id.* The Postal Service also states that the current price structure leads to less efficient transportation and entry practices, and asserts that the new prices move toward providing parcels with ''better cost coverage and encourage efficient dropship behavior by increasing the incentive to take parcels to the delivery unit.'' *Id.* It further states that its pricing for parcels ''is also a further step in the Postal Service's ongoing harmonization of all of its parcels offerings.'' *Id.*

Carrier route mail. The Postal Service characterizes its approach to carrier route mail as one that only modestly raises the pound price and results in an increase that is very close to the cap. It asserts that carrier route mail tends to have market characteristics that are more similar to non-carrier route Standard Mail than to the saturation mail with which it was formerly grouped. It claims that with the advent of delivery point sequencing of letters and the expected implementation of the Flats Sequencing System (FSS), the relationship between carrier route and less-dense preparation will remain important. It says it expects to continue monitoring the pricing of flats mail as FSS advances, and will make adjustments as necessary to take full advantage of FSS operations while considering the implications for customers. *Id.*

Saturation and high-density mail. The Postal Service says it plans modest, below-cap increases for saturation and high-density Standard Mail. Under its approach, the pound price decreases slightly, which the Postal Service asserts is consistent with its recent pricing proposals for saturation-type mail. *Id.* It says that while it believes that further consideration of the pound price is warranted, it has chosen to make a small, incremental reduction this year. It says that a lower pound price should help to encourage saturation mailers to increase their content, as this is the price mailers use when deciding whether it is economical to put additional inserts and weight into saturation mailings. *Id.* at 16–17.

Other efficiency-related adjustments. The Postal Service notes that it makes several additional adjustments designed to improve mail processing efficiency. It says some, like increased dropship discounts for parcels and increased incentives for automation, are discussed in more detail in Part II.C. of its Adjustment Notice. *Id.* at 17. It says it also widens the price gap between saturation letters and flats brought to the destination sectional center facility, on the expectation that this will reduce the incentive for some mailers to convert letter-size mail pieces to flats, which are not as efficient to process and deliver. *Id.*

C. Periodicals

The Postal Service identifies two Periodicals products: Within County Periodicals and Outside County Periodicals. The planned price changes are relatively close and both are below the cap. Product-specific changes appear in the following table.

TABLE VII–3

Product	Percent change
Outside County	2.713
Within County	2.630
Overall	2.710

Id. at 17.

Outside County. The Postal Service notes that Outside County Periodicals prices were restructured last July, and asserts that this resulted in large price increases for some customers groups, particularly smaller publications. It says it has therefore sought to limit the degree to which the increase for any one price element varies from the average increase for the product, in the interest of reducing the possibility of substantially greater-than-average price increases for any publication. *Id.* at 17–18. It says that Periodicals efficiency incentives ''have generally been maintained at their current levels.'' *Id.* at 18. It asserts that this will allow Periodicals mailers to continue adjusting to the new framework while allowing the Postal Service to continue studying the effect of the new structure on mailers. It asserts that in future price adjustments, it will be able to use this information, as well as the banked pricing authority (of 0.190 percent) generated by the planned increase in this case in pricing decisions to improve the profitability of Periodicals. *Id.*

The Postal Service also notes that its FY 2007 Annual Compliance Report indicated that Periodicals was the only class of mail that did not cover its attributable costs in the last fiscal year. It asserts, however, that the new Periodicals price structure was only in effect for a small part of FY 2007, and that the cost coverage calculated for that year is therefore based primarily on the costs and revenues resulting from Docket No. R2005–1 prices. It says the new structure is expected to have cost-savings benefits as mailers respond to the incentives it creates. It concludes that an increase in May of this year, in conjunction with last July's increase and increased mailer response to the new structure, should help move Periodicals toward cost-compensatory status. The Postal Service also says it is working to further understand and reduce Periodicals costs, and has assembled a task force for that purpose, consistent with section 708 of the PAEA. *Id.*

D. Package Services

The Postal Service identifies five Package Services products: Single-Piece Parcel Post, Bound Printed Matter Flats, Bound Printed Matter Parcels, Media Mail/Library Mail, and Inbound Surface Parcel Post (at Universal Postal Union (UPU) rates). The planned price changes range from a low of 0.42 percent to a high of 4.54 percent. Product-specific changes appear in the following table.

TABLE VII–4

Product	Percent change
Single-Piece Parcel Post	3.30
BPM Flats	0.42
BPM Parcels	2.10
Media Mail and Library Mail	4.54
Inbound Surface Parcel Post	*2.62
Overall	2.876

*The Postal Service notes that prices for Inbound (International) Surface Parcel Post (at UPU rates) are determined by the Universal Postal Union and are not under its (the Postal Service's) control. *Id.* at 19, n.15.

Id. at 19.

Medial Mail/Library Mail. The Postal Service states that in Package Services, it has focused on improving the profitability of Media Mail/Library Mail and single-piece Parcel Post. It notes that the most recent Annual Compliance Report indicates that Media Mail/Library Mail have a very low cost coverage, so it plans to increase the prices for this product by an overall percentage greater than the cap. However, the Postal Service maintains that the prices for this product remain relatively low, in recognition of its

''educational, scientific, cultural, and informational value.'' *Id.* The Postal Service further notes that within this product, the prices for the 5-digit presort categories increase by greater than the product average. It asserts these categories currently receive discounts that exceed avoided costs by more than is necessary, so the discounts are accordingly reduced. *Id.*

Single-piece Parcel Post. The Postal Service plans to raise the prices for single-piece Parcel Post slightly above the cap to improve its cost coverage. It says that within this product, and consistent with its approach in Docket No. R2006–1, it plans to increase intra-BMC prices by more, on average, than inter-BMC prices. *Id.* It says the overall average price increase is 5.79 percent for intra-BMC and 2.56 percent for inter-BMC, for a combined average increase of 3.30 percent. *Id.* at 19–20.

The Postal Service adds that no intra-BMC base (machinable) prices decrease, but says ''a handful'' of inter-BMC base prices decrease, by up to 5 percent (Oversized, Zone 8). It also says that because non-machinable Parcel Post parcels were on average smaller in FY 2007 than in previous years, both the intra-BMC and inter-BMC nonmachinable surcharges are reduced by 5 percent. *Id.* at 20.

Bound Printed Matter (BPM). The Postal Service plans to set BPM prices below the price cap, to offset the larger increases in single-piece Parcel Post and Media Mail/Library Mail, and to remain below the price cap. *Id.* Within BPM, the prices for flats (which the Postal Service identifies as primarily heavy catalogs) increase by a lesser percentage than parcels (which primarily reflect order fulfillment). The Postal Service says this continues, but does not conclude, the shape-based de-averaging that began in Docket No. R2001–1, and that it reflects the overall lower costs of processing and delivering flats, as opposed to parcels, and is designed to encourage increased volume of lower-cost, flat-shaped catalogs. *Id.*

In addition, the Postal Service says it increases the pound prices for both parcels and flats ''to ensure better coverage of transportation costs, particularly for short-distance mail pieces, and to harmonize the BPM pricing structure with other Package Services prices.'' The Postal Service says these changes lead to larger price increases for heavier weight pieces, and for closer-in zones, and to relatively smaller increases for some lighter pieces and pieces going to farther zones. *Id.*

Dropship discounts. The Postal Service plans to reduce the dropship discounts to destination bulk mail centers and destination sectional center facilities, and to increase the discount to destination delivery unit, on grounds that this will provide more efficient price signals. It asserts that the first two discounts are too heavily discounted relative to their avoided costs, while the third needs to be increased. *Id.* at 21.

E. Special Services

The Postal Service identifies 11 Special Services products: Ancillary Services; International Ancillary Services; Address List Services; Caller Service; Change-of-Address Credit Card Authentication; Confirm; International Reply Coupon Service; International Business Reply Mail Service; Money Orders; Post Office Box Service; and Premium Forwarding Service. The planned overall increase is 2.848 percent. *Id.* The Postal Service did not present a product-specific table of changes.[5]

The Postal Service states that for many Special Services, fee increases were generally designed to be close to the percentage increase in CPI–U, while maintaining consistency with historical rounding constraints. *Id.* It says that Special Services affected by this approach include Business Reply Mail; Certified Mail; Caller Service; Address List Services (for example, List Correction and ZIP Coding of mailing lists); Account Maintenance; Application and Mailing Permit fees; Parcel Airlift Service; Post Office Boxes; Return Receipt (the Green Card); electronic Signature Confirmation; Shipper Paid Forwarding; and Special Handling. *Id.* The Postal Service states the greater increases for Electronic Return Receipt and Return Receipt After Mailing reflect their high value of service. *Id.* at 21, n.17.

Certified Mail. The Postal Service observes that Certified Mail has a significant effect on the percentage increase for this class. It says that the Certified Mail fee, with a nickel rounding constraint, increases by 5 cents, or 1.9 percent. The Postal Service says this was chosen, rather than the alternative increase of 10 cents, or 3.8 percent, because a 3.8 percent increase for Certified Mail, coupled with its relatively large size, would have required many other fees within Special Services to be priced well below the cap. The Postal Service considers this contrary to the high value many of the other fees provide. *Id.* at 22.

Address Correction Service (ACS). For ACS, the Postal Service says the price increases are designed to address increased costs and reflect the value this service provides. It states that two of the fees (the One Code ACS ''additional notices'' fee for First-Class Mail letters and the One Code ACS ''first two notices'' fee for Standard Mail letters) increase by $0.01. *Id.* It says the additional notice fee for Standard Mail increases by $0.03, paralleling the percentage increase for First-Class Mail. It says no price changes are made to the Manual and Electronic ''Other'' fees, to encourage better addresses. *Id.*

Certificate of Mailing. The Postal Service asserts that in Certificate of Mailing, it designed fees for individual pieces to increase by a percentage as close to the cap percentage as possible, consistent with the historical nickel rounding constraint for this special service. However, it increases fees for Certificates of Mailing for bulk pieces slightly above the cap to reflect the low price compared to a high value of service. *Id.*

Confirm. The Postal Service observes that there has been a recent decrease in the number of end user subscribers for Confirm. It says that the planned new prices nonetheless retain the existing unlimited scan option, but that this tier receives a larger increase to reflect the changing subscriber base. *Id.*

Insurance. The Postal Service states that the planned above-average price increases for the $50.01 to $100 fee and the $100.01 to $200 fee are intended to smooth the price relationships among the various increments. It says the increase in the incremental fee reflects the increased value of service provided as the item's value increases. *Id.* at 22–23.

Registered Mail. The Postal Service plans to increase fees for Registered Mail by an average of 7.3 percent to reflect the high value of service offered, and to improve the very low cost coverage. *Id.* at 23.

Stamped Envelopes. The Postal Service does not plan to increase the fees for single-piece stamped envelopes in recognition of the users of these envelopes. It says it keeps the fees for plain envelopes in packs of 500 as close to the cap as possible within the rounding constraints. Fees for personalized envelopes, however, increase by more than the cap to reflect

[5] The Errata supplies price charts that were missing from Appendix A in the Postal Service's February 11, 2008 filing for the following non-ancillary special services: 1515 Address List Services; 1520 Caller Service; 1525 Change-of-Address Credit Card Authorization; 1530 Confirm; 1545 Money Orders; 1550 Post Office Box Service; and 1555 Premium Forwarding Service. The Errata also states that three incorrect insurance fees have been identified on page 31 of 35 of Appendix A. It provides a revised page 31 with the correct fees. The Postal Service says it will post amended or corrected versions of all prices and fees in locations under the control of the Postal Service.

the convenience this service provides. *Id.*

Stamped Cards. The Postal Service plans to increase the fee for a single Stamped Card by the minimum amount of $0.01, which is a 50 percent increase. It also increases the other Stamped Cards fees by 50 percent. *Id.*

Bulk Parcel Return Service. The Postal Service states that the increase in the per-piece fee is similar to the general increase for Standard Mail parcels, which comprises this category. *Id.*

Restricted Delivery, Collect on Delivery Notice of Nondelivery and Alteration of Charges, and Money Order inquiries. The Postal Service says the larger-than-average fee increases for these services reflect their high value of service. *Id.*

International special services. The Postal Service says its general approach to international special services has been to set fees for those services that are similar to the fees for the equivalent domestic service, and that it has followed this approach for International Certificates of Mailing; International Registered Mail; International Return Receipts; and International Restricted Delivery. *Id.* at 23.

VIII. Mail Classification Schedule Product Description Changes

The Postal Service addresses § 3010.14(b)(9) in Part III of its Adjustment Notice. *Id.* at 37–38. This rule requires that the Adjustment Notice include all the changes to the product descriptions within the MCS that are necessitated by the planned price adjustments. The Postal Service provides the proposed MCS revisions in Appendix C. It notes that the changes are based on the draft MCS it submitted on September 24, 2007 (as supplemented on November 20, 2007). *Id.* at 37. Revisions are made to the MCS in Outbound Single-Piece First-Class Mail International and in Outside County Periodicals.

International Mail. The MCS changes related to International Mail reflect changes to the International Mail Manual (IMM) that expand the number of country groups for First-Class Mail International to nine; implement the new shape-based prices for letters, large envelopes (flats), and packages (small packets); and apply the nonmachinable surcharge to all nonmachinable letters, regardless of weight. The Postal Service states that notice of the IMM changes is being placed on *http://www.USPS.com* and will be published shortly in the **Federal Register**. *Id.*

Outside County Periodicals. The Postal Service states that the MCS revisions for this product reflect the changes to the Domestic Mail Manual (DMM) required to implement 39 U.S.C. 3626(g)(4), which authorizes the provision of a discount for the Outside County pieces of a Periodicals publication having fewer than 5,000 Outside County pieces, and at least one Within County piece. The Postal Service states that the DMM changes implementing this new discount are being placed on *http://www.USPS.com* and will be published shortly in the **Federal Register**. *Id.* at 37–38.

IX. Ordering Paragraphs

It Is Ordered

1. The Commission establishes Docket No. R2008–1 to consider the planned price adjustments in rates and fees for market dominant postal products and services identified in the Postal Service's February 11, 2008 Notice of Market-Dominant Price Adjustment.

2. The Commission establishes a 20-day period for public comment on the planned price adjustments. This period extends through March 3, 2008.

3. The Commission appoints Kenneth E. Richardson as officer of the Commission to represent the interests of the general public in this proceeding.

4. The Commission directs the Secretary of the Commission to arrange for prompt publication of this notice in the **Federal Register**.

By the Commission.

Steven W. Williams,

Secretary.

[FR Doc. E8–3163 Filed 2–19–08; 8:45 am]

BILLING CODE 7710–FW–P

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Sunshine Act Meeting; Notification of Item Added to Meeting Agenda

DATE OF MEETING: January 29, 2008.

STATUS: Closed.

PREVIOUS ANNOUNCEMENT: 73 FR 3760, January 22, 2008.

ADDITION:

1. Consideration of Rate and Classification Changes.

At its closed meeting on January 29, 2008, the Board of Governors of the United States Postal Service voted unanimously to add this item to the agenda of its closed meeting and that no earlier announcement was possible. The General Counsel of the United States Postal Service certified that in her opinion discussion of this item could be properly closed to public observation.

CONTACT PERSON FOR MORE INFORMATION: Wendy A. Hocking, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–1000.

Wendy A. Hocking,

Secretary.

[FR Doc. 08–778 Filed 2–14–08; 4:03 pm]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

Submissions for OMB Review; Comment Request;

Upon Written Request; Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213

Extensions:

Rule 163; OMB Control No. 3235–0619; SEC File No. 270–556.

Rule 173; OMB Control No. 3235–0618; SEC File No. 270–557.

Rule 433; OMB Control No. 3235–0617; SEC File No. 270–558.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget these requests for extension of the previously approved collections of information discussed below.

Rule 163 (17 CFR 230.163) provides an exemption from Section 5(c) (15 U.S.C. 77e(c)) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) for certain communications by or on behalf of a well-known seasoned issuer. The information filed under Rule 163 is publicly available. We estimate that it takes approximately .24 burden hours per response to provide the information required under Rule 163 and that the information is filed by 53 respondents for a total annual reporting burden of approximately 13 hours. We estimate that 25% of .24 hours per response (.06 hours) is prepared by the company for a total annual burden of approximately 3 hours (.06 hours per response × 53 responses).

Rule 173 (17 CFR 230.173) provides a notice of registration to investors who purchased securities in a registered offering under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*). The Rule 173 notice must be provided by each underwriter or dealer to each purchaser of securities. We estimate that it takes approximately .01 hour per response to provide the information required under Rule 173 and that the information is filed by 5,338 companies approximately 43,546 times a year for a total of

approximately 232,448,548 responses. We estimate that the total annual reporting burden for Rule 173 is approximately 2,324,485 hours (.01 hours per response × 232,448,548 responses).

Rule 433 (17 CFR 230.433) governs the use and filing of free writing prospectuses under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*). The purpose of Rule 433 is to reduce restrictions on communications that companies can make to investors during a registered offering, while still maintaining a high level of investor protection. A free writing prospectus meeting the conditions of Rule 433(d)(1) must be filed with the Commission and is publicly available. We estimate that it takes approximately 1.3 burden hours per response to prepare a free writing prospectus and that the information is filed by 2,906 companies approximately 1.25 times a year for a total of approximately 3,633 responses. We estimate that 25% of the 1.3 burden hours per response (.32 hours) is prepared by the company for total annual reporting burden of approximately 1,163 hours (.32 hours × 3,633 responses).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following person: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to *Alexander_T._Hunt@omb.eop.gov*; and (ii) R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: February 12, 2008.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–3041 Filed 2–19–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 27d–2; SEC File No. 270–500; OMB Control No. 3235–0566.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collections of information under the Investment Company Act of 1940 (15 U.S.C. 80a) (''Act'') summarized below. The Commission plans to submit these collections of information to the Office of Management and Budget for approval.

Rule 27d–2 (17 CFR 270.27d–2) is entitled ''Insurance Company Undertaking in Lieu of Segregated Trust Account.'' Rule 27d–1 (17 CFR 270.27d–1) [1] under the Act requires the depositor or principal underwriter for an issuer of periodic payment plans to deposit funds into a segregated trust account to provide assurance of its ability to fulfill its refund obligations under sections 27(d) and 27(f).[2] Rule 27d–2 provides an exemption from rule 27d–1 under the Act for depositors or principal underwriters for the issuers of periodic payments plans. In order to comply with the rule: (i) The depositor or principal underwriter must secure from an insurance company a written guarantee of the refund requirements; (ii) the insurance company must satisfy certain financial criteria; and (iii) the depositor or principal underwriter must file as an exhibit to the issuer's registration statement, a copy of the written undertaking, an annual statement that the insurance company has met the requisite financial criteria on a monthly basis, and an annual audited balance sheet.

Rules 27d–1 and 27d–2, which were explicitly authorized by statute, provide assurance that depositors and principal underwriters of issuers have access to sufficient cash to meet the demands of certificate holders who reconsider their decisions to invest in a periodic payment plan. The information collection requirements in rules 27d–1 and 27d–2 enable the Commission to monitor compliance with reserve rules.

Only one registered investment company has issued a new periodic payment plan certificate within the past 18 months, and the principal underwriter or depositor for this sole issuer relies on the exemption in rule 27d–2. The respondent makes approximately three responses per year.[3] The insurance company provides the written undertaking, annual statement, and certified balance sheet at no cost to the respondent. The staff estimates that the respondent spends approximately one hour per year filing the required documents from the insurance company on EDGAR. Thus, we estimate that the annual burden is approximately 1 hour.

The staff believes that rule 27d–2 does not impose any cost burdens other than those arising from the hour burdens discussed above.

The estimates of average burden hours and costs are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.[4]

Complying with the collection of information requirements of rule 27d–2 is mandatory for depositors or principal underwriters of issuers of periodic payment plans who rely on the rule for an exemption from complying with rule 27d–1 and filing Form N–27D–1 (17 CFR 274.127d–1). The information provided pursuant to rule 27d–2 is public and, therefore, will not be kept confidential.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

[1] The information collection requirements for rule 27d–1 and Form N–27D–1 are covered in a separate **Federal Register** notice under OMB Control No. 3235–0560.

[2] The rule sets forth minimum reserve amounts and guidelines for the management and disbursement of the assets in the account. Rule 27d–1(j) directs depositors and principal underwriters annually to make an accounting of their segregated trust accounts on Form N–27D–1, which is filed with the Commission. The form requires depositors and principal underwriters to report deposits to a segregated trust account, including those made pursuant to paragraphs (c) and (e) of the rule. Withdrawals pursuant to paragraph (f) of the rule also must be reported. In addition, the form solicits information regarding the minimum amount required to be maintained under paragraphs (d) and (e) of rule 27d–1.

[3] The three responses are: (i) obtaining and filing the written undertaking or an amendment to the undertaking, (ii) filing the insurance company's annual statement that the financial conditions were satisfied, and (iii) filing the insurance company's certified balance sheet.

[4] These estimates are based on telephone interviews between the Commission staff and representatives of depositors or principal underwriters of periodic payment plan issuers.

Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (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 respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*.

Dated: February 14, 2008.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–3109 Filed 2–19–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57322; File No. 10–182]

BATS Exchange, Inc.; Notice of Filing of Application and Amendment No. 1 Thereto for Registration as a National Securities Exchange Under Section 6 of the Securities Exchange Act of 1934

February 13, 2008.

On November 8, 2007, BATS Exchange, Inc. (''BATS Exchange'') submitted to the Securities and Exchange Commission (''Commission'') a Form 1 application under the Securities Exchange Act of 1934 (''Exchange Act''), seeking registration as a national securities exchange under Section 6 of the Exchange Act. On February 13, 2008, BATS Exchange submitted Amendment No. 1 to its Form 1. The Commission is publishing this notice to solicit comments on BATS Exchange's Form 1, as amended. The Commission will take these comments into consideration in making its determination about whether to grant BATS Exchange's request to be registered as a national securities exchange. The Commission shall grant such registration if it finds that the requirements of the Exchange Act and the rules and regulations thereunder with respect to BATS Exchange are satisfied.[1]

BATS Exchange's Form 1 provides detailed information on how it proposes to satisfy the requirements of the Exchange Act. In general, BATS Exchange will operate a fully automated electronic book for orders to buy or sell securities with a continuous, automated matching function. Liquidity will be derived from orders to buy and orders to sell submitted to BATS Exchange electronically by BATS Exchange members from remote locations. BATS Exchange will not have a trading floor, nor will there be exchange specialists or market makers. BATS Exchange's Form 1 is available at the Commission's Public Reference Room and *www.sec.gov.*

Interested persons are invited to submit written data, views, and arguments concerning BATS Exchange's Form 1, including whether BATS Exchange's application is consistent with the Exchange 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 10–182 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number 10–182. 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 BATS Exchange's Form 1 filed with the Commission, and all written communications relating to the application 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. 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 10–182 and should be submitted on or before April 7, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[2]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–3082 Filed 2–19–08; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(a).

[2] 17 CFR 200.30–3(a)(71)(i).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of February 18, 2008:

A Closed Meeting will be held on Thursday, February 21, 2008 at 10:45 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), (9)(B), and (10) and 17 CFR 200.402(a)(5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Casey, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the Closed Meeting scheduled for Thursday, February 21, 2008 will be:

Formal orders of investigation;
Institution and settlement of injunctive actions;
Institution and settlement of administrative proceedings of an enforcement nature;
Resolution of litigation claims; and
A litigation matter.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been

added, deleted or postponed, please contact: The Office of the Secretary at (202) 551–5400.

Dated: February 14, 2008.

Nancy M. Morris,

Secretary.

[FR Doc. E8–3161 Filed 2–19–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Securities Act of 1933, Release No. 8893/February 13, 2008; Securities Exchange Act of 1934, Release No. 57319/February 13, 2008]

Order Regarding Review of FASB Accounting Support Fee for 2008 Under Section 109 of the Sarbanes-Oxley Act of 2002

The Sarbanes-Oxley Act of 2002 (the ''Act'') provides that the Securities and Exchange Commission (the ''Commission'') may recognize, as generally accepted for purposes of the securities laws, any accounting principles established by a standard setting body that meets certain criteria. Consequently, Section 109 of the Act provides that all of the budget of such a standard setting body shall be payable from an annual accounting support fee assessed and collected against each issuer, as may be necessary or appropriate to pay for the budget and provide for the expenses of the standard setting body, and to provide for an independent, stable source of funding, subject to review by the Commission. Under Section 109(f) of the Act, the amount of fees collected for a fiscal year shall not exceed the ''recoverable budget expenses'' of the standard setting body. Section 109(h) amends Section 13(b)(2) of the Securities Exchange Act of 1934 to require issuers to pay the allocable share of a reasonable annual accounting support fee or fees, determined in accordance with Section 109 of the Act.

On April 25, 2003, the Commission issued a policy statement concluding that the Financial Accounting Standards Board (''FASB'') and its parent organization, the Financial Accounting Foundation (''FAF''), satisfied the criteria for an accounting standard-setting body under the Act, and recognizing the FASB's financial accounting and reporting standards as ''generally accepted'' under Section 108 of the Act.[1] As a consequence of that recognition, the Commission undertook a review of the FASB's accounting support fee for calendar year 2008. In connection with its review, the Commission also reviewed the budget for the FAF and the FASB for calendar year 2008.

Section 109 of the Act also provides that the standard setting body can have additional sources of revenue for its activities, such as earnings from sales of publications, provided that each additional source of revenue shall not jeopardize, in the judgment of the Commission, the actual or perceived independence of the standard setter. In this regard, the Commission also considered the interrelation of the operating budgets of the FAF, the FASB and the Governmental Accounting Standards Board (''GASB''), the FASB's sister organization, which sets accounting standards used by state and local government entities. The Commission has been advised by the FAF that neither the FAF, the FASB nor the GASB accept contributions from the accounting profession.

After its review, the Commission determined that the 2008 annual accounting support fee for the FASB is consistent with Section 109 of the Act. Accordingly,

It is ordered, pursuant to Section 109 of the Act, that the FASB may act in accordance with this determination of the Commission.

By the Commission.

Nancy M. Morris,

Secretary.

[FR Doc. E8–3036 Filed 2–19–08; 8:45 am]

BILLING CODE 8011–01–P

[1] Financial Reporting Release No. 70.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57323; File No. SR–NYSE–2008–09]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, and Amendment No. 1 Thereto, To Permit the Exchange To Modify or Cancel Clearly Erroneous Trades

February 13, 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 January 28, 2007, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared substantially by NYSE. On February 8, 2008, NYSE submitted Amendment No. 1 to the proposed rule change.[3] NYSE filed the proposed rule change as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[4] and Rule 19b–4(f)(6) thereunder,[5] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt new Rule 128 on an interim, six month basis, to permit the Exchange to cancel or adjust clearly erroneous executions if they arise out of the use or operation of any quotation, execution or communication system owned or operated by the Exchange, including those executions that occur in the event of a system disruption, system malfunction or equipment changeover.

The text of the proposed rule change is available at *http://www.nyse.com*, the principal office of NYSE, and the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NYSE included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NYSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The NYSE proposes a new rule to provide the Exchange with the authority to cancel or adjust clearly erroneous trades of securities executed on or through the systems and facilities of the NYSE. Currently, Rule 128B (Publication of Changes, Corrections, Cancellations or Omissions and Verifications of Transactions) permits the NYSE to cancel a trade when all

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange made technical and clarifying revisions to the purpose section and Exhibit 1 of the filing and amended the text of new Rule 128 to allow a request for review of a clearly erroneous execution to be made in person on the Floor of the Exchange.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

parties agree, such as when the execution in question was erroneous and a Floor Official concurs in the cancellation. However, such action cannot be taken if one or both parties to the trade do not agree to cancel the trade. Additionally, the Exchange has no authority, on its own initiative, to cancel or adjust an execution when such execution is clearly erroneous.

Most other national securities exchanges have some version of a clearly erroneous execution rule, and the NYSE is currently in discussions with the Commission to adopt a robust and market-appropriate rule of its own. In the interim, however, the Exchange lacks the authority to cancel or adjust executions of securities in situations where there has been a clearly erroneous trade.

In an era of interconnected markets and highly sophisticated electronic trading, the NYSE's inability to cancel or adjust trades presents a risk to the integrity of the equities markets and all related markets. This is because a clearly erroneous order will likely be executed on multiple exchanges, not just the NYSE, but whereas trades executed on other markets will be subject to cancellation and/or adjustment through the enforcement of those markets' clearly erroneous execution rules, trades executed on the NYSE will stand. This would render an unequal result in plainly identical circumstances.

To address this gap in otherwise analogous trading situations, the NYSE proposes to adopt an interim rule based on a clearly erroneous trade rule used by NYSE Arca, Inc.[6] The proposed NYSE rule would sunset after six months (subject to renewal by application to the Commission), which will give the NYSE and Commission staff an opportunity to develop a more robust and market-appropriate clearly erroneous execution rule, without risking the integrity of the market in the interim.

Description of the Proposed Rule

The proposed rule sets forth the process through which the Exchange may review certain executions and declare them null and void or otherwise modify their terms. The rule contemplates primarily two scenarios: (i) Clearly erroneous trades, which are trades where one element of the trade (side of the market, size of the trade, price of the trade, or security symbol) is obviously incorrect and needs to be corrected; and (ii) trades resulting from extraordinary market conditions or other circumstances in which the cancellation of the trades is necessary in order to maintain a fair and orderly market or to protect the public interest.

Among other things, the proposed rule authorizes the NYSE to receive complaints from market participants requesting designated officers of the Exchange to review the terms of the execution and creates a process by which the parties to the trade and the Exchange can conduct the review and determine whether to nullify or modify the execution in question if it is found to be clearly erroneous. Requests for review of a clearly erroneous execution by an officer of the Exchange may be made via telephone, facsimile, e-mail or in person on the Floor of the Exchange.

In the event the designated officer of the Exchange determines that the transaction in dispute is clearly erroneous, the officer is authorized to declare the transaction null and void or modify one or more of the terms of the transaction to achieve an equitable rectification of the error placing the parties in the same position, or as close as possible to the same position in which they would have been, had the error not occurred.

The proposed rule also provides that the NYSE may, on its own initiative, review trades that it believes are clearly erroneous, and may cancel or modify such trades if necessary to protect the integrity of the markets or the public interest. Such trades may take place in connection with a malfunction or disruption of any systems, electronic communications, and trading facilities of the Exchange, or in connection with extraordinary market conditions or other circumstances. The Exchange believes that errors due to these types of conditions warrant a review irrespective of whether an Exchange member or member organization complains. Moreover, such reviews are consistent with standard industry practices.[7]

Under the circumstances described above, the provision allows the designated reviewing officer, on his or her own motion, to review these transactions and declare such transactions arising out of the use or operation of such facilities during such period null and void or modify the terms of these transactions if the officer determines that the transactions are clearly erroneous, or that such actions are necessary for the maintenance of a fair and orderly market or for the protection of investors and the public interest. Absent extraordinary circumstances, action by the officer must be taken within 30 minutes of detection of the erroneous transaction, in accordance with the procedures set out in the rule.

Appeal Process

The proposed rule permits a party affected by the NYSE's decision to cancel or modify a clearly erroneous trade to request an appeal to the Clearly Erroneous Execution Panel (''CEE Panel'') to review the determination, and sets out the process for doing so. The members of the CEE Panel are the NYSE Chief Regulatory Officer (''CRO''), or the CRO's designee,[8] and representatives from two members or member organizations.[9]

The procedures for both the initial decision and the appeal reflect a balance between giving the parties adequate time to respond to the decision, and the need for market certainty that a trade either will or won't stand. Thus, for example, requests for an appeal must be made via facsimile or e-mail within 30 minutes after the party requesting the appeal is given notification of the initial determination, after which the CEE Panel will review the information and make a final determination to either affirm or overturn or modify the action taken by the Officer. All final determinations made by the CEE Panel are without prejudice to the rights of the parties to the transaction to submit their dispute to arbitration. In order to discourage frivolous or abusive use of the appeal process, the Exchange will assess a $500.00 fee against the Exchange member or member organization that initiated the request for appeal if the outcome of the appeal is to uphold the initial decision of the Exchange officer.

Trade Nullification and Price Adjustment for Securities Admitted to Unlisted Trading Privileges on the NYSE (''UTP'') That Are the Subject of Initial Public Offerings (''IPOs'')

Pursuant to Rule 12f–2 under the Act,[10] the Exchange may extend unlisted trading privileges to a security that is the subject of an initial public offering when at least one transaction in the subject security has been effected on the national securities exchange or

[6] *See* NYSE Arca Equities Rule 7.10 (Clearly Erroneous Executions).

[7] *See, e.g.*, Nasdaq Rule 11890(b).

[8] The Exchange represents that a designee of the CRO will be an employee of the Exchange, working closely with and reporting directly to the CRO. The Exchange notes that NYSE Arca Equities Rule 7.10 designates a CEE Panel to independently make appeals decisions and also to overturn or modify actions taken by the Exchange. *See* NYSE Arca Equities Rule 7.10(c)(2).

[9] The Exchange shall designate at least 10 member or member organization representatives to be called upon to serve on the CEE Panel.

[10] 17 CFR 240.12f–2.

association upon which the security is listed and the transaction has been reported pursuant to an effective transaction reporting plan. The proposed rule provides the Exchange with authority to nullify trades and adjust prices for securities that are the subject of initial public offerings. The Exchange believes that a separate provision is appropriate because the Exchange's intent is always to adjust the price of an opening trade on the Exchange if it is away from the price the issue opens on the listing market. Thus, if the price of the trade is either $1.00 or 10% away from the opening price on the listing market, the trade would be automatically adjusted to the opening price. In such circumstances, the designated reviewing officer shall declare the opening transaction null or adjust the transaction price to the opening price on the listed exchange or association. Clearly erroneous executions of subsequent trades in the subject security will be reviewed in the same manner as those subject to the general guidelines. Consistent with the clearly erroneous executions rule set forth in the proposed rule, this provision also provides an immediate appeal process for determinations.

2. Statutory Basis

The proposed rule change is consistent with the provisions of Section 6 of the Act,[11] in general, and with Section (b)(5) of the Act,[12] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. NYSE believes the proposed rule would place the NYSE on an equal footing with other national securities exchanges. This will promote the integrity of the market and protect the public interest, since it would permit all exchanges to cancel or adjust clearly erroneous trades when such trades occur, rather than canceling them on all other markets, but leaving them standing on only one market.

B. Self-Regulatory Organization's Statement on Burden on Competition

NYSE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(6) thereunder.[14]

NYSE has requested that the Commission waive the 30-day operative delay. The Commission notes that the proposed rule is based on a rule that has been previously approved by the Commission.[15] The Commission believes that waiving the 30-day operative delay will allow the Exchange to immediately and timely cancel or adjust trades that it determines to be clearly erroneous under Rule 128. The Commission believes that the addition of this clearly erroneous trade rule is consistent with the protection of investors and the public interest. The Commission hereby designates the proposal as operative upon filing.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–NYSE–2008–09 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2008–09. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *(http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NYSE. 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–2008–09 and should be submitted on or before March 12, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–3083 Filed 2–19–08; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78f.

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has determined to waive the five-day pre-filing period in this case.

[15] *See supra* note 6.

[16] For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(A)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57321; File No. SR–Amex–2008–11]

Self-Regulatory Organizations; American Stock Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Delete the AEMI-One Rules

February 13, 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 February 11, 2008, the American Stock Exchange, LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared substantially by the Amex. The Amex has submitted the proposed rule change under Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to delete its AEMI-One rules in their entirety because the AEMI-One rules, which have been superseded by the Amex's AEMI rules, are no longer in effect.

The text of the proposed rule change is available at *http://www.amex.com,* the principal office of the Amex, and the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Amex proposes to delete the AEMI-One rules in their entirety. The Amex adopted the AEMI-One rules in connection with the implementation of an initial version of AEMI, the Exchange's hybrid market trading platform for equity products and exchange-traded funds, that was operative on a pilot basis prior to the Trading Phase Date.[5] The AEMI-One rules are no longer in effect, having been superseded by the Exchange's AEMI rules on the Trading Phase Date.

According to the Amex, the Exchange initially deployed AEMI in a controlled manner during the AEMI-One pilot program, and the AEMI-One rules that were effective during this period were slightly modified from their AEMI rule counterparts to reflect the different regulatory environments in effect before and after the Trading Phase Date. In its original AEMI-One proposal, the Amex stated that it would delete the AEMI-One rules from its rulebook via a filing with the Commission following the effectiveness of the AEMI rules;[6] that is the purpose of the instant filing.

2. Statutory Basis

The Amex believes that the proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5) of the Act,[8] in particular, in that it is 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.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Amex believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

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 Amex has designated the proposed rule change as one that: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Therefore, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10]

The Amex has requested that the Commission waive the 30-day operative delay. The Commission hereby grants the Amex's request.[11] As discussed above, the Amex's AEMI–One rules are no longer in effect because they have been superseded by the AEMI rules. Accordingly, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because deleting the AEMI–One rules will eliminate potential confusion and ensure that the Amex's rulebook accurately reflects the rules currently in effect on the Amex.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[5] The Trading Phase Date was the final date set by the Commission for full operation of all automated trading centers that intended to qualify their quotations for trade-through protection under Rule 611 of Regulation NMS, 17 CFR 242.611. The Trading Phase Date was March 5, 2007.

[6] *See* File No. SR–Amex–2006–72, Amendment No. 1 at 5–6 (''The Exchange expects that the AEMI-One Pilot will be in effect for only a few months up until the Trading Phase Date, at which time the AEMI Rules will become effective and will supersede the AEMI-One Rules. The Exchange will then delete the AEMI-One Rules from its rulebook via a filing with the Commission.'')

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Amex to provide the Commission with written notice of its intention to file the proposed rule change, along with a brief description of the text of the proposed rule change, at least five business days prior to filing the proposal with the Commission, or such shorter time as designated by the Commission. The Commission has determined to waive the five-day period in this case.

[11] For purposes of waiving the 30-day operative delay, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–Amex–2008–11 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Amex–2008–11. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–Amex–2008–11 and should be submitted on or before March 12, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–3060 Filed 2–19–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57325; File No. SR–Amex–2008–04]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change Related to Index Dissemination Requirements for Index-Linked Securities

February 13, 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 January 30, 2008, the American Stock Exchange LLC (''Amex'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend sections 107D(i) and 107D(h)(3)(ii) of the Amex *Company Guide* (''Company Guide'') to provide that the value of an index or composite value of the indexes underlying an issuance of Index-Linked Securities must be widely disseminated on at least a 15-second basis with respect to an index or indexes containing only securities listed on a national securities exchange, or on at least a 60-second basis with respect to an index or indexes containing foreign country securities.

The text of the proposed rule change is available at *http://www.amex.com,* at the Exchange, and at the Commission's Public Reference Room.

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 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 Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend sections 107D(i) and section 107D(h)(3)(ii) of the *Company Guide* for the purpose of conforming the index dissemination requirements relating to Index-Linked Securities to that of Index Fund Shares (''IFSs'') and Portfolio Depository Receipts (''PDRs'') (collectively, exchange-traded funds or ''ETFs''). Section 107D(i)(iii) of the *Company Guide* provides that the current value of an index will be widely disseminated at least every 15 seconds. Similarly, section 107D(i)(iv) provides that if the value of an Index-Linked Security is based on more than one index, then the composite value of such indexes must be widely disseminated at least every 15 seconds.

As proposed, section 107D(i) of the *Company Guide* would be revised as follows:

> (iii) The current value of an index or composite value of more than one (1) index will be widely disseminated at least every 15 seconds with respect to indexes containing only securities listed on a national securities exchange, or on at least a 60-second basis with respect to indexes containing foreign country securities, provided, however, that if the official index value does not change during some or all of the period when trading is occurring on the Exchange (for example, for indexes of foreign country securities because of time zone differences or holidays in countries where such indexes' component stocks trade) then the last calculated official index value must remain available throughout Exchange trading hours.

Accordingly current subparagraph (iv) to section 107D(i) of the *Company Guide* would be eliminated.

In addition, the delisting requirements set forth in section 107D(h)(3)(ii) of the *Company Guide* relating to Index-Linked Securities would similarly need revision due to

the proposed change to the index dissemination requirement. The Exchange proposes to amend section 107D(h)(3)(ii) of the *Company Guide* to distinguish the dissemination requirements of an index consisting solely of securities listed on a national securities exchange and those indexes that may contain components that are foreign country securities. Section 107D(h)(3)(ii) of the *Company Guide* reads: ''(3) The Exchange will also commence delisting or removal proceedings (unless the Commission has approved the continued trading of the subject index-linked security), under any of the following circumstances: * * * (ii) if the value of the index or composite value of the indexes is no longer calculated or widely disseminated on at least a 15-second basis; * * *''

As proposed, section 107D(h)(3)(ii) of the *Company Guide* would be revised as follows:

(ii) if the value of the index or composite value of the indexes is no longer calculated or widely disseminated on at least a 15-second basis with respect to indexes containing only securities listed on a national securities exchange, or on at least a 60-second basis with respect to indexes containing foreign country securities, provided, however, that if the official index value does not change during some or all of the period when trading is occurring on the Exchange (for example, for indexes of foreign country securities because of time zone differences or holidays in countries where such indexes' component stocks trade) then the last calculated official index value must remain available throughout Exchange trading hours;* * *

This proposal would conform the index dissemination requirements for Index-Linked Securities to those for ETFs as set forth in Commentary .03(b)(ii) to Rule 1000—AEMI (PDRs) and Commentary .02(b)(ii) to Rule 1000A—AEMI (IFSs). Both ETF Commentaries noted above provide that an index value for an ETF based on an underlying international or global index be widely disseminated by one or more major market data vendors at least every 60 seconds during the time such ETFs are traded on the Exchange. This contrasts with the requirement for an index underlying an ETF based on a domestic index where the underlying index must be updated at least every 15 seconds. If the index value does not change during some or all of the period when trading is occurring on the Exchange, the last official calculated index value must remain available through Exchange trading hours. This 60-second standard reflects limitations, in some instances, on the frequency of intra-day trading information with respect to foreign country securities and the fact that in many cases, trading hours for overseas markets overly only in part, or not at all, with Exchange trading hours.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6(b) of the Act.[3] Specifically, the Exchange believes the proposed rule change is consistent with the requirements of section 6(b)(5) Act[4] that the rules of an exchange be designed to prevent fraudulent and manipulative acts, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which Amex consents, the Commission will:

A. By order approve such proposed rule change; or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

The Exchange has requested accelerated approval of this proposed rule change prior to the 30th day after the date of publication of the notice of the filing thereof. The Commission has determined that a 15-day comment period is appropriate in this case.

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–Amex–2008–04 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Amex–2008–04. 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 offices 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–Amex–2008–04 and should be submitted on or before March 6, 2008.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

[5] 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[5]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–3088 Filed 2–19–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57314; File No. SR–CBOE–2007–143]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving Proposed Rule Change Relating to the Imposition of Fines for Minor Rule Violations

February 12, 2008.

On December 27, 2007, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend CBOE Rule 17.50 (Imposition of Fines for Minor Rule Violations) and to revise CBOE 17.50(g)(8) (Violations of Exercise and Exercise Advice Rules for Non-Cash-Settled Equity Options). The proposed rule change was published for comment in the **Federal Register** on January 10, 2008.[3] The Commission received no comments regarding the proposal. This order approves the proposed rule change.

The Exchange proposes to increase and strengthen the sanctions imposed under its Minor Rule Violation Plan (''MRVP'') on any member who fails to submit to the Exchange in a timely manner pursuant to CBOE Rule 11.1 (or a Regulatory Circular issued pursuant to CBOE Rule 11.1) ''Advice Cancel'' or exercise instruction relating to the exercise or nonexercise of a noncash-settled equity option. The Exchange believes that increasing the fine levels specified with respect to both individual members and member organizations and lengthening the surveillance period from a 12-month period to a rolling 24-month period will serve as an effective deterrent to such violative conduct.[4]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[5] In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,[6] which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission further believes that CBOE's proposal to increase the fine levels imposed on individuals and member organizations who fail to submit Advice Cancel or exercise instructions in a timely manner is consistent with Sections 6(b)(1) and 6(b)(6) of the Act,[7] which require that the rules of an exchange enforce compliance with, and provide appropriate discipline for, violations of Commission and Exchange rules. In addition, the Commission finds that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act, as required by Rule 19d–1(c)(2) under the Act,[8] which governs minor rule violation plans. The Commission believes that the proposed rule change should strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities as an SRO in cases where full disciplinary proceedings are unsuitable in view of the minor nature of the particular violation.

In approving this proposed rule change, the Commission in no way minimizes the importance of compliance with CBOE rules and all other rules subject to the imposition of fines under the MRVP. The Commission believes that the violation of any SRO rules, as well as Commission rules, is a serious matter. However, the MRVP provides a reasonable means of addressing rule violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. The Commission expects that CBOE would continue to conduct surveillance with due diligence and make a determination based on its findings, on a case-by-case basis, whether a fine of more or less than the recommended amount is appropriate for a violation under the CBOE MRVP or whether a violation requires formal disciplinary action under CBOE Chapter XVII.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[9] and Rule 19d–1(c)(2) under the Act,[10] that the proposed rule change (SR–CBOE–2007–143) be, and hereby is, approved and declared effective.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–3038 Filed 2–19–08; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 57089 (January 3, 2008), 73 FR 1900.

[4] In addition, as a member of the Intermarket Surveillance Group, the Exchange, as well as certain other self-regulatory organizations (''SROs'') executed and filed on October 29, 2007 with the Commission, a final version of an Agreement pursuant to Section 17(d) of the Act (the ''17d–2 Agreement''). As set forth in the 17d–2 Agreement, the SROs have agreed that their respective rules concerning the filing of Expiring Exercise Declarations, also referred to as Contrary Exercise Advices, of options contracts, are common rules. As a result, the proposal to amend CBOE's MRVP will result in further consistency in sanctions among the SROs that are signatories to the 17d–2 Agreement concerning Contrary Exercise Advice violations.

[5] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78f(b)(1) and 78f(b)(6).

[8] 17 CFR 240.19d–1(c)(2).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 240.19d–1(c)(2).

[11] 17 CFR 200.30–3(a)(12); 17 CFR 200.30–3(a)(44).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57317; File No. SR–CBOE–2007–151]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving Proposed Rule Change Relating to Linkage Fees

I. Introduction

On December 20, 2007, Chicago Board Options Exchange, Incorporated (''CBOE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its Options Intermarket Linkage (''Linkage'') fees. The proposed rule change was published for comment in the **Federal Register** on January 9, 2008.[3] The Commission received no comments on the proposal. This order approves the proposal.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 57083 (January 2, 2008), 73 FR 1651.

II. Description of the Proposal

Under the Exchange's current Fees Schedule, Principal (''P'') and Principal Acting as Agent (''P/A'') Orders [4] are charged a transaction fee of $.26 per contract.[5] Satisfaction orders are not assessed Exchange fees. Linkage fees are operating under a pilot program scheduled to expire on July 31, 2008. The Exchange has proposed to increase its Linkage transaction fee for P and P/A Orders from $.26 per contract to $.30 per contract.

III. Discussion

After careful review, the Commission finds that the proposed rule change, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange [6] and, in particular, the requirements of section 6 of the Act.[7] Specifically, the Commission finds that the proposal is consistent with section 6(b)(4),[8] in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members and other persons using its facilities.

The Exchange has represented that the proposed fee increase would help the Exchange partially offset its costs of crediting Linkage fees and related costs to Designated Primary Market-Makers (''DPMs'') pursuant to the Exchange's DPM Linkage Fees Credit Program.[9] The Commission believes that the proposed increase in fees is reasonable for this purpose. Further, the Commission notes that the fees proposed by CBOE are commensurate with the fees charged by other options exchanges for Linkage Orders. Finally, the Commission notes that the Exchange's fees are operating under a pilot program in effect until July 31, 2008.[10]

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[11] that the proposed rule change (SR–CBOE–2007–151) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–3059 Filed 2–19–08; 8:45 am]

BILLING CODE 8011–01–P

[4] Under the Plan for the Purpose of Creating and Operating an Options Intermarket Linkage (''Plan'') and Exchange Rule 6.80(12), which tracks the language of the Plan, a ''Linkage Order'' means an Immediate or Cancel Order routed through the Linkage as permitted under the Plan. There are three types of Linkage Orders: (i) ''P/A Order'', which is an order for the principal account of a specialist (or equivalent entity on another Participant Exchange that is authorized to represent Public Customer orders), reflecting the terms of a related unexecuted Public Customer order for which the specialist is acting as agent; (ii) ''P Order'', which is an order for the principal account of an Eligible Market Maker and is not a P/A Order; and (iii) ''Satisfaction Order,'' which is an order sent through the Linkage to notify a member of another Participant Exchange of a Trade-Through and to seek satisfaction of the liability arising from that Trade-Through.

[5] Linkage orders in MNX, NDX and RUT options are also charged a $.10 per contract surcharge fee. *See* CBOE Fees Schedule, Footnote 14.

[6] The Commission has considered the proposed rule change's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] *See* CBOE Fees Schedule, Section 21.

[10] *See* CBOE Fees Schedule, footnote 8.

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57315; File No. SR–CHX–2008–01]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Number 1 Thereto Relating to Participant Fees and Credits

February 12, 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 January 31, 2008, the Chicago Stock Exchange, Inc. (''CHX'' or ''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 substantially prepared by the Exchange. On February 11, 2008, CHX filed Amendment No. 1 to the proposed rule change. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX proposes to amend its Schedule of Participant Fees and Credits (the ''Fee Schedule'') to modify the fees for the receipt of orders through the CHX Connect network. The text of this proposed rule change is available on the Exchange's Web site at *http://www.chx.com/rules/proposed_rules.htm*, the Exchange, and in the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CHX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CHX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Through this filing, the Exchange would amend its Fee Schedule to modify the fees for the receipt of orders through the CHX Connect network.[5] Under the current Fee Schedule, the Exchange charges a $10,000 base fee per month to any participant firm that receives orders through the CHX Connect network and charges an additional fee of $.0004 per share for executions that are processed by the network.[6] The Exchange also applies a credit of $.0004 for each provide share executed in the Exchange's Matching System.[7] Through this filing, the Exchange proposes to decrease the monthly base fee to $5,000 per month and apply an increased credit of $.0008 for each provide share executed in the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

[5] The Exchange's CHX Connect system is a communications service that allows its participants to route orders to any destination connected to the CHX's network, including (1) the CHX Matching System; (2) CHX institutional brokers; (3) market makers or other broker-dealers connected to the CHX's network, which provide order handling and execution services in the over-the-counter market; and (4) other destinations (including order-routing vendors) that are connected to the CHX's network. *See* Securities Exchange Act Release No. 54846 (November 30, 2006), 71 FR 71003 (December 7, 2006) (SR–CHX–2006–34). Fees are charged under the Fee Schedule to participants that receive orders through this service.

[6] The base fee is prorated in the first month of use, based on the date that a participant firm begins using the service.

[7] No credits are carried over from month to month and these credits cannot be used to reduce the base fee below $5,000 per month.

Matching System.[8] This proposed fee change is designed to take effect on February 1, 2008.

These changes are designed to create incentives for Exchange participants to use the CHX Connect network and for users of the CHX Connect network to send orders to the Exchange's Matching System. The Exchange believes that these fee changes equitably allocate fees among CHX participants (including those participants using the CHX Connect network) while helping to offset the costs of providing the network.[9]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(4) of the Act[10] in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

B. Self Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change is filed pursuant to Section 19(b)(3)(A)(ii) of the Act[11] and subparagraph (f)(2) of Rule 19b-4 thereunder[12] because it establishes or changes a due, fee, or other charge applicable only to a member imposed by a self-regulatory organization. Accordingly, the proposal is effective upon Commission receipt of the filing. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[13]

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–CHX–2008–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CHX–2008–01. 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 CHX. 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–CHX–2008–01 and should be submitted on or before March 12, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–3039 Filed 2–19–08; 8:45 am]

BILLING CODE 8011–01–P

[8] These credits may not be used to reduce the overall fee below $5,000 per month.

[9] The CHX had increased the monthly fee to $10,000 per month, effective December 1, 2007. Although the Exchange had notified affected participants of the proposed change, at least one of those participants voiced concerns about the fee increase soon after it took effect. The Exchange has determined that it is appropriate to continue to offer the CHX Connect services, with a reduced monthly fee and an additional incentive to place orders in the Exchange's Matching System for execution.

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

[12] 17 CFR 240.19b–4(f)(2).

[13] For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on February 11, 2008, the date on which CHX filed Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57316; File No. SR–NSX–2008–01]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto, To Amend Exchange Rule 16 and the Fee Schedule To Modify Fees and Market Data Rebates for AutoEx Transactions and Other Changes

February 12, 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 January 30, 2008, the National Stock Exchange, Inc. (''NSX'' or ''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 substantially prepared by the Exchange. On February 6, 2008, NSX filed Amendment No. 1 to the proposed rule change. The Exchange filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NSX proposes to amend Exchange Rule 16 and the NSX BLADE℠ Fee and Rebate Schedule (the ''Fee Schedule'') in order to (i) modify the fees and market data rebates associated with trading primarily in the automatic mode of order execution (hereinafter ''AutoEx'') transactions, (ii) establish a

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

quarterly *de minimis* threshold amount for tape credits, and (iii) substitute the current Fee Schedule with a more transparent Fee Schedule in a revised format.

The text of the proposed rule change is available at the *http://www.nsx.com*, the Exchange and the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to modify certain fees and rebates for trades executed in AutoEx as set forth in Rule 11.13(b)(1). In addition, a *de minimis* rebate threshold is proposed which would eliminate market data rebates below a certain quarterly amount. Finally, the Fee Schedule is proposed to be reformatted to best reflect the foregoing.

Liquidity Taking Fee in AutoEx

Specifically, with respect to securities traded at one dollar or more in AutoEx, the instant filing proposes reducing the per share executed liquidity taking fee from $0.0030 to $0.0025 across Tapes A, B, and C in NSX BLADE for any ETP Holder [5] who, as a liquidity provider, has an average daily volume of at least 50,000 shares executed per trading day (excluding partial trading days and securities under one dollar) for the month in which the executions occurred. The current $0.0030 per share executed liquidity taking fee would remain unchanged with respect to ETP Holders who do not reach such average daily volume during the month. The introduction of a reduced liquidity taking fee upon meeting certain volume requirements is intended to provide an incentive to ETP Holders to post liquidity at NSX, thereby bringing more liquidity to the Exchange.

Liquidity Provider Rebates in AutoEx

Further, the Exchange proposes to simplify the Fee Schedule by providing for different rebates for adding liquidity depending on whether the security is in Tape A, B, or C, instead of whether the security is identified a ''Designated ETF Share.'' Thus, under the proposed Fee Schedule, the rebate for adding liquidity is reduced in Tape A and C securities generally from $0.0030 per share executed to $0.0026 per share executed. The $0.0030 per share executed liquidity providing rebate in Tape B securities remains unchanged except for those Exchange Traded Funds identified as ''Designated ETF Shares,'' in which case the per share executed liquidity providing rebate is reduced under the proposed Fee Schedule from $0.0035 to $0.0030. The concept of ''Designated ETFs'' and the associated fee and rebate structure as set forth in the current Fee Schedule is proposed to be eliminated in its entirety and replaced by the foregoing simplified rate structure. However, the distinction between the liquidity provider rebates for the Tape B securities and the Tape A and C securities corresponds to the previous distinction between Designated ETF Shares (which were largely Tape B securities) and Tape A and C securities. NSX made this distinction in its past Fee Schedule between the rebates to provide an incentive to increase trading volume in the Designated ETF Shares.[6] Since these shares are largely Tape B securities that distinction has been retained in this proposed Fee Schedule. Moreover, NSX believes the proposed liquidity provider rebates are not unfairly discriminatory in that all ETP Holders are eligible to trade in Tape A, B, and C securities in AutoEx and may do so at their discretion.

Tape Credits in AutoEx

The instant filing proposes to eliminate tape credits for trade market data across Tapes A, B, and C in all AutoEx transactions, regardless of the price of the security. Tape credits would remain unchanged with respect to transactions in the Order Delivery mode.

De Minimis Rebate Threshold for Market Data Revenue

The instant filing proposes to adopt new Exchange Rule 16.2(b)(5) to eliminate quarterly market data revenue rebates which aggregate less than $250 per quarter with respect to any ETP Holder. The Exchange believes that the value of such rebates is outweighed by the associated administrative burden both to the Exchange and to ETP Holders who receive such rebates.

Order Delivery and Other Fees and Costs

The fees and/or rebates with respect to transactions in the Order Delivery mode of order interaction as set forth in Rule 11.13(b)(2) remain unchanged, except for the application of the *de minimis* tape credit rebate threshold discussed above. Moreover, for purposes of clarification, the execution fee for removing liquidity is the same whether the contra-order is an AutoEx or Order Delivery order.[7] Thus, the fee for taking liquidity from an Order Delivery firm is reflected in the Fee Schedule as taking liquidity in the AutoEx mode. Further, there are no currently proposed changes to the information contained in Section III of the proposed Fee Schedule regarding routing fees.

New Fee Schedule Format

Finally, in addition to the substantive changes to the Fee Schedule as described above, the instant filing proposes the adoption of a new format for its Fee Schedule, which the Exchange believes is more transparent and easier to navigate and understand. The proposed Fee Schedule is renamed as the Exchange's ''Fee and Rebate Schedule'' and includes the tape credit amounts specified in Rule 16.2(b). The proposed Fee Schedule provides explanatory endnotes and cross references applicable Exchange Rules where necessary or applicable.

Rationale

The Exchange has determined that the proposed rule change is necessary for competitive reasons. Under the proposed Fee Schedule, the fees paid by a particular ETP Holder will depend on a number of variables, including the mode of order interaction (AutoEx or Order Delivery), the types of securities traded through NSX BLADE (Tapes A, B, or C), the average daily monthly

[5] An ETP Holder is a registered broker or dealer that has been issued an Equity Trading Permit by NSX. An ETP Holder will have the status of a ''member'' of the Exchange as that term is defined in Section 3 of the Act.

[6] *See* Securities Exchange Act Release No. 56883 (December 3, 2007), 72 FR 69269 (December 7, 2007) (SR–NSX–2007–11).

[7] Orders entered via Order Delivery/Automated Response provide liquidity to the Exchange since the Order Delivery/Automated Response mode was designed to prevent an Order Delivery Firm from having two executions for the same liquidity in two different markets—at the Exchange and at the Electronic Communication Network's market. Thus, by definition, an Order Delivery mode of execution would never take liquidity away from the Exchange. The contra-side of an Order Delivery Automated Response will always be conducted using the AutoEx Mode of Rule 11.3(b)(1).

liquidity providing volume, and the price of the securities (with a distinction for those above and below $1.00). These factors are taken into consideration and reflected in the introduction of a reduced liquidity taking fee (provided certain volume thresholds are met) as an incentive to ETP Holders to both post and take liquidity at NSX and the more simplified fee schedule for Tape B securities (in lieu of the longer list of the fees associated with specific Designated ETF Shares [8]). NSX notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be more attractive. Accordingly, the proposed modifications attempt to keep the fees reflected in the Fee Schedule competitive with fees charged by other venues and to continue to be reasonable and equitably allocated to those ETP Holders that opt to direct orders to NSX. Based upon the information above, the Exchange believes that the proposed rule change is consistent with the protection of investors and the public interest.

Effective Date and Notice

The Exchange intends to make operative the tape rebate structure and new Fee Schedule in accordance with the proposed rule change on February 1, 2008. Pursuant to Exchange Rule 16.1(c), the Exchange will ''provide ETP Holders with notice of all relevant dues, fees, assessments and charges of the Exchange'' through the issuance of a Regulatory Circular of the changes to the Fee Schedule and will provide a copy of the rule filing on the Exchange's Web site (*http://www.nsx.com*).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of section 6(b) of the Act,[9] in general, and section 6(b)(4) of the Act,[10] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges. Moreover, the proposed liquidity provider rebates are not discriminatory in that all ETP Holders are eligible to trade in Tape A, B, and C securities in AutoEx and may do so at their discretion.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change is filed pursuant to section 19(b)(3)(A)(ii) of the Act [11] and subparagraph (f)(2) of Rule 19b–4 thereunder [12] because it establishes or changes a due, fee, or other charge applicable only to a member imposed by a self-regulatory organization. Accordingly, the proposal is effective upon Commission receipt of the filing. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[13]

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–NSX–2008–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NSX–2008–01. 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 NSX. 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–NSX–2008–01 and should be submitted on or before March 12, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–3040 Filed 2–19–08; 8:45 am]

BILLING CODE 8011–01–P

[8] *See supra* note 6.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

[12] 17 CFR 240.19b–4(f)(2).

[13] For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on February 6, 2008, the date on which NSX filed Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57318; File No. SR–NYSEArca–2007–91]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of a Proposed Rule Change, and Amendment No. 1 Thereto, Relating to the Listing and Trading of Six iShares® S&P GSCI™ Commodity-Indexed Trusts

February 12, 2008.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 30, 2007, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange''), through its

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

wholly-owned subsidiary NYSE Arca Equities, Inc. (''NYSE Arca Equities''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. On February 11, 2008, the Exchange filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NYSE Arca proposes to list and trade shares of the following trusts under NYSE Arca Equities Rule 8.203: iShares® S&P GSCI™ Energy Commodity-Indexed Trust; iShares® S&P GSCI™ Natural Gas Commodity-Indexed Trust; iShares® S&P GSCI™ Industrial Metals Commodity-Indexed Trust; iShares® S&P GSCI™ Light Energy Commodity-Indexed Trust; iShares® S&P GSCI™ Livestock Commodity-Indexed Trust; and iShares® S&P GSCI™ Non-Energy Commodity-Indexed Trust.[3] The shares will represent units of beneficial interest representing fractional undivided beneficial interests in the net assets of the issuing trust.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade, under NYSE Arca Equities Rule 8.203, shares (''Shares'') of the following trusts: iShares® S&P GSCI™ Energy Commodity-Indexed Trust; iShares® S&P GSCI™ Natural Gas Commodity-Indexed Trust; iShares® S&P GSCI™ Industrial Metals Commodity-Indexed Trust; iShares® S&P GSCI™ Light Energy Commodity-Indexed Trust; iShares® S&P GSCI™ Livestock Commodity-Indexed Trust; and iShares® S&P GSCI™ Non-Energy Commodity-Indexed Trust (collectively, the ''Trusts'').[4] The objective of each Trust is for the performance of the Shares to correspond generally to the performance of the following indexes, respectively, before payment of the Trust's and the Investing Pool's (as described below) expenses and liabilities: the S&P GSCI™ Energy Total Return Index; S&P GSCI™ Natural Gas Total Return Index; S&P GSCI™ Industrial Metals Total Return Index; S&P GSCI™ Light Energy Total Return Index; S&P GSCI™ Livestock Total Return Index; and S&P GSCI™ Non-Energy Total Return Index (collectively, the ''Total Return Indexes'').[5]

The commodity component of each of the Total Return Indexes is comprised of either one or a group of commodities included in the S&P GSCI™ Commodity Index (''S&P GSCI™''), which is a production-weighted index of the prices of a diversified group of futures contracts on physical commodities. Each Total Return Index reflects the return of the corresponding S&P GSCI™ Excess Return Index, described below, together with the return on specified U.S. Treasury securities that are deemed to have been held to collateralize a hypothetical long position in the futures contracts comprising the corresponding index.

Each S&P GSCI™ Excess Return Index is calculated based on the same commodities as those in the respective Total Return Index and S&P GS Index (defined below), and reflects the returns that are potentially available through a rolling uncollateralized investment in the contracts comprising the applicable S&P GS Index, as described below. An S&P GSCI™ Excess Return Index does not reflect the return on U.S. Treasury securities used to collateralize positions in futures contracts comprising that index.[6]

Each Trust will attempt to approximate its respective Total Return Index by holding interests in an Investing Pool (described below), which, in turn, holds futures contracts (referred to as CERFs) on the corresponding Excess Return Index, together with cash or other short-term securities used to collateralize the futures positions.

a. The Trusts and Investing Pools

Each Trust is a Delaware statutory trust that will issue units of beneficial interest called Shares, representing fractional undivided beneficial interests in its net assets. Substantially all of the assets of each Trust consist of holdings of the limited liability company interests of a specified commodity pool (''Investing Pool Interests''), which are the only securities in which the Trust may invest. Specifically, the Trusts will hold interests in the following commodity pools, respectively: iShares® S&P GSCI™ Energy Commodity-Indexed Investing Pool; iShares® S&P GSCI™ Natural Gas Commodity-Indexed Investing Pool; iShares® S&P GSCI™ Industrial Metals Commodity-Indexed Investing Pool; iShares® S&P GSCI™ Light Energy Commodity-Indexed Investing Pool;

[3] iShares® is a registered trademark of Barclays Global Investors, N.A. ''S&P GSCI'' is a trademark of Standard & Poor's, a division of The McGraw-Hill Companies, Inc.

[4] The Sponsor (defined infra) filed Form S–1 for the iShares GS Commodity Industrial Metals Indexed Trust, iShares GS Commodity Light Energy Indexed Trust, iShares GS Commodity Livestock Indexed Trust and iShares GS Commodity Non-Energy Indexed Trust on August 31, 2006. *See* Registration Nos. 333–135823 through 135826. The Sponsor filed Pre-Effective Amendment No 3 to the Form S–1 for the iShares® S&P GSCI™ Industrial Metals Commodity-Indexed Trust and iShares® S&P GSCI™ Non-Energy Commodity-Indexed Trust on June 18, 2007. *See* Registration Nos. 333–135825 and 333–135824. The Sponsor filed Form S–1 for the iShares® S&P GSCI™ Energy Commodity-Indexed Trust and iShares® S&P GSCI™ Natural Gas Commodity-Indexed Trust on January 23, 2007 and Amendment No. 1 thereto on June 18, 2007. *See* Registration Nos. 333–140162 and 333–140164. These filings are referred to collectively herein as the ''Registration Statements.''

[5] The Commission approved for listing on the New York Stock Exchange LLC (''NYSE'') shares of the iShares GS Commodity Light Energy Indexed Trust, shares of the iShares GS Commodity Industrial Metals Indexed Trust, shares of the iShares GS Commodity Livestock Indexed Trust, and shares of the iShares GS Commodity Non-Energy Indexed Trust. *See* Securities Exchange Act Release No. 55585 (April 5, 2007), 72 FR 18500 (April 12, 2007) (SR–NYSE–2006–75). None of the Trusts, however, have commenced trading on the NYSE and, following Commission approval of this proposed rule change, will be listed on NYSE Arca rather than on NYSE and will not trade on NYSE.

[6] S&P acquired the S&P GSCI (formerly known as the ''Goldman Sachs Commodity Index''), the S&P GSCI–ER and the Total Return Indexes from Goldman Sachs & Co., the prior Index Sponsor, effective May 2007. According to the Registration Statements, S&P has represented that it will not modify the determination methodology for the S&P GSCI Total Return Indexes from that existing on the date of transfer (May 9, 2007) for at least one year. Thereafter, there can be no assurance as to whether the methodology will be changed. To date, the Registration Statements for iShares GS Commodity Light Energy Indexed Trust and iShares GS Commodity Livestock Indexed Trust have not been updated to reflect S&P's index acquisitions from Goldman Sachs. The Sponsor of the Trusts, Barclays Global Investors International, Inc., has represented that the Registration Statements for iShares GS Commodity Light Energy Indexed Trust and iShares GS Commodity Livestock Indexed Trust will be updated to reflect S&P's acquisitions prior to commencement of secondary market trading of Shares of such Trusts.

iShares ® S&P GSCI ™ Livestock Commodity-Indexed Investing Pool; and iShares ® S&P GSCI ™ Non-Energy Commodity-Indexed Investing Pool (collectively, ''Investing Pools'').

Each commodity pool holds long positions in futures contracts on the following indexes, respectively, (collectively, the ''Excess Return Indexes'') and will post margin in the form of cash or short-term securities to collateralize these futures positions: S&P GSCI ™ Energy Excess Return Index (''S&P GS Energy-ER''); S&P GSCI ™ Natural Gas Excess Return Index (''S&P GS Natural Gas-ER''); S&P GSCI ™ Industrial Metals Excess Return Index (''S&P GS Industrial Metals-ER''); S&P GSCI ™ Light Energy Excess Return Index (''S&P GSLE-ER''); S&P GSCI ™ Livestock Excess Return Index (''S&P GS-Livestock-ER''); and S&P GSCI ™ Non-Energy Excess Return Index (''S&P GSNE-ER''). Trading on the Chicago Mercantile Exchange (''CME'') Globex electronic trading platform of CERFs based on the GSCI Excess Return Index commenced effective March 12, 2006 for trade date March 13, 2006. Trading in CERFs based on the other Excess Return Indexes is expected to begin shortly before the initial sale of the Shares to the public.

The Trusts and the Investing Pools are each commodity pools managed by a commodity pool operator registered as such with the Commodity Futures Trading Commission (''CFTC''). According to the Registration Statements, neither the Trusts nor the Investing Pools are investment companies registered under the Investment Company Act of 1940 (''Investment Company Act'').[7]

According to the Registration Statements, the Shares are intended to constitute a relatively cost-effective means of achieving investment exposure to the performance of the respective Total Return Indexes, which are intended to reflect the performance of a specified group of commodities. Although the Shares will not be the exact equivalent of an investment in the underlying futures contracts and Treasury securities represented by the Total Return Indexes, the Shares are intended to provide investors with an alternative way of participating in the commodities market.

b. The Sponsor and Trustee

The Sponsor of the Trusts is Barclays Global Investors International, Inc. The Sponsor's primary business function is to act as Sponsor and commodity pool operator of the Trusts and Manager of the Investing Pools, as discussed below.[8] The Advisor to the Investing Pools is Barclays Global Fund Advisors, a California corporation and an indirect subsidiary of Barclays Bank PLC.

Barclays Global Investors International, Inc. will also serve as the Manager of the Investing Pools, in which capacity it will serve as commodity pool operator of the Investing Pools and be responsible for their administration. The Manager will arrange for and pay the costs of organizing the Investing Pools. The Manager has delegated some of its responsibilities for administering the Investing Pools to the Administrator, State Street Bank and Trust Company which, in turn, has employed the Investing Pool Administrator and the Tax Administrator (PriceWaterhouse Coopers) to maintain various records on behalf of the Investing Pools.

The Trustee is Barclays Global Investors, N.A., a national banking association affiliated with the Sponsor. The Trustee is responsible for the day-to-day administration of the Trusts. Day-to-day administration includes (1) processing orders for the creation and redemption of Baskets (each Basket an aggregation of 50,000 Shares), (2) coordinating with the Manager of the Investing Pools the receipt and delivery of consideration transferred to, or by, the Trusts in connection with each issuance and redemption of Baskets, and (3) calculating the net asset value (''NAV'') of the Trusts on each Business Day.[9] The Trustee has delegated these responsibilities to the Trust Administrator, State Street Bank and Trust Company, a banking corporation that is not affiliated with the Sponsor or the Trustee.[10] Pursuant to NYSE Arca Equities Rule 8.203(e)(4)(ii), a change in the Trustee would require prior notice to and approval by the Exchange.

c. The Investing Pools

The Investing Pools will hold long positions in CERFs, which are cash-settled futures contracts listed on the CME that have a term of approximately five years after listing and whose settlement at expiration is based on the value of the respective Excess Return Indexes at that time. The Investing Pools will also earn interest on the assets used to collateralize its holdings of CERFs.

d. The Total Return Indexes

The S&P GSCI ™ Industrial Metals Total Return Index is intended to reflect the performance of a group of industrial metal commodities (currently including copper, aluminum, zinc, nickel and lead). The S&P GSCI ™ Light Energy Total Return Index is intended to reflect the performance of the same group of commodities included in the S&P GSCI®, but with a reduced weighting for energy commodities. The S&P GSCI ™ Livestock Total Return Index is intended to reflect the performance of a group of commodities comprising the livestock component of the S&P GSCI ™ (currently including live cattle, live hogs and feeder cattle). The S&P GSCI ™ Non-Energy Total Return Index is intended to reflect the performance of a group of non-energy commodities. The S&P GSCI ™ Energy Total Return Index is intended to reflect the performance of a group of commodities comprising the energy component of the S&P GSCI™. The S&P GSCI ™ Natural Gas Total Return Index is intended to reflect the performance of the performance of natural gas included in the S&P GSCI™.

Each relevant Index is administered, calculated and published by Standard & Poor's (the ''Index Sponsor''). The Excess Return Indexes reflect the return of an uncollateralized investment in the contracts comprising the S&P GSCI™ Energy Index, the S&P GSCI™ Natural Gas Index, the S&P GSCI™ Industrial Metals Index, the S&P GSCI™ Light Energy Index, the S&P GSCI™ Livestock Index, and the S&P GSCI™ Non-Energy Index, respectively (collectively, the ''S&P GS Indexes''). In addition, the Excess Return Indexes incorporate the economic effect of ''rolling'' the contracts included in the S&P GS Indexes as they near expiration. ''Rolling'' a futures contract means closing out a position in an expiring futures contract and establishing an equivalent position in the contract on the same commodity with the next expiration date. If S&P ceases to maintain the Total Return Indexes, the Trusts, through the Investing Pools, may seek investment results that correspond generally to the performance of a fully collateralized investment in a successor, or, in the opinion of the Manager, reasonably similar indexes to the Total Return Indexes.

Each Trust, through its respective Investing Pool, will be a passive investor in CERFs and the cash or Short-

[7] 15 U.S.C. 80a *et seq.*

[8] Barclays Global Investors International, Inc. is a commodity pool operator registered with the CFTC.

[9] The Registration Statements define ''Business Day'' as any day (1) on which none of the following occurs: (a) the NYSE is closed for regular trading, (b) the CME is closed for regular trading or (c) the Federal Reserve transfer system is closed for cash wire transfers, or (2) the Trustee determines that it is able to conduct business.

[10] Except as otherwise specifically noted, the information provided in this proposed rule change relating to the Trusts and the Shares, commodities markets, and related information is based entirely on information included in the Registration Statements.

Term Securities [11] posted as margin to collateralize the Investing Pool's CERF positions. Neither such Trust nor the respective Investing Pool will engage in any activities designed to obtain a profit from, or to ameliorate losses caused by, changes in the value of CERFs or securities posted as margin. Each Investing Pool, and some other types of market participants, will be required to deposit margin with a value equal to 100% of the value of each CERF position at the time it is established. Those market participants not subject to the 100% margin requirement are required to deposit margin generally with a value of 3% to 5% of the established position. Interest paid on the collateral deposited as margin, net of expenses, will be reinvested by the Investing Pool or, at the Trustee's discretion, may be distributed from time to time to the Shareholders. The Investing Pool's profit or loss on its CERF positions should correlate with increases and decreases in the value of the applicable Excess Return Index, although this correlation will not be exact. The interest on the collateral deposited by the Investing Pool as margin, together with the returns corresponding to the performance of the applicable Excess Return Index, is expected to result in a total return for the Investing Pool that corresponds generally, but is not identical, to the applicable Index. Differences between the returns of the Investing Pool and the applicable Index may be based on, among other factors, any differences between the return on the assets used by the Investing Pool to collateralize its CERF positions and the U.S. Treasury rate used to calculate the return component of the Index, timing differences, differences between the weighting of the Investing Pool's proportion of assets invested in CERFs versus the Index, and the payment of expenses and liabilities by the Investing Pool. Each Trust's net asset value will reflect the performance of the applicable Investing Pool, such Trust's sole investment.

The Investing Pools will be managed by the Advisor, which will invest all of the Investing Pools' assets in long positions in respective CERFs and post margin in the form of cash or Short-Term Securities to collateralize the CERF positions. Any cash that the Investing Pool accepts as consideration from the Trusts for Investing Pool Interests will be used to purchase additional CERFs, in an amount that the Advisor determines will enable the Investing Pools to achieve investment results that correspond with the applicable Index, and to collateralize the CERFs. According to the Registration Statements, the Advisor will not engage in any activities designed to obtain a profit from, or to ameliorate losses caused by, changes in value of any of the commodities represented by the S&P GSCI™–ER Indexes or the positions or other assets held by the Investing Pool.

e. Futures Contracts on the Excess Return Indexes

The assets of the Investing Pools will consist of CERFs and cash or Short-Term Securities posted as margin to collateralize the Investing Pools' CERF positions. Futures contracts and options on futures contracts on the GSCI, which does not reflect the excess return embedded in the GSCI–ER, have been traded on the CME since 1992. CERFs are listed and traded separately from the S&P GSCI futures contracts and options on futures contracts.

CERFs trading is subject to the rules of the CME. According to the Registration Statements, CERFs trade on GLOBEX, the CME's electronic trading system, and do not trade through open outcry on the floor of the CME.[12] Transactions in CERFs are cleared through the CME clearinghouse by the trader's futures commission merchant acting as its agent. Under these clearing arrangements, the CME clearinghouse becomes the buyer to each member futures commission merchant representing a seller of the contract and the seller to each member futures commission merchant representing a buyer of the contract. As a result of these clearing arrangements, each trader holding a position in CERFs is subject to the credit risk of the CME clearinghouse and the futures commission merchant carrying its position in CERFs.

Each CERF is a contract that provides for cash settlement, at expiration, based upon the final settlement value of the applicable Excess Return Index at the expiration of the contract, multiplied by a fixed dollar multiplier. On a daily basis, most market participants with positions in CERFs are obligated to pay, or entitled to receive, cash (known as ''variation margin'') in an amount equal to the change in the daily settlement level of the CERF from the preceding trading day's settlement level (or, initially, the contract price at which the position was entered into). Specifically, if the daily settlement price of the contract increases over the previous day's price, the seller of the contract must pay the difference to the buyer, and if the daily settlement price is less than the previous day's price, the buyer of the contract must pay the difference to the seller.

Futures contracts also typically require deposits of initial margin as well as payments of daily variation margin as the value of the contracts fluctuate. For most market participants, the initial margin requirement for CERFs is generally expected to be 3% to 5%. Certain market participants (known as ''100% margin participants''), however, will be required to deposit with their futures commission merchant (''FCM'') initial margin in an amount equal to 100% of the value of the CERF on the date the position is established. The FCM, in turn, will be required to deliver to the CME clearinghouse initial margin in a specified amount and pledge to the clearinghouse, pursuant to a separate custody arrangement, an amount equal to the remainder of the 100% margin amount posted by 100% margin participants, either from amounts posted by those 100% margin participants or from its own assets. The separate custody arrangement will be either an account with the FCM or a third party custody account.

As a result of these arrangements, a 100% margin participant buying a CERF will be subject to substantially greater initial margin requirements than other market participants, but will not be required to pay any additional amounts to its futures commission merchant as variation margin if the value of the CERFs declines. Instead, the futures commission merchant will be obligated to make variation margin payments to the clearinghouse in respect of CERFs held by 100% margin participants, which it will withdraw from the separate custody account (and, in turn, from the 100% margin posted by those participants).

If the daily settlement price increases, the futures commission merchant will receive variation margin from the clearinghouse for the account of the 100% margin participant, which it will hold in the separate custody account for the benefit of 100% margin participants. The buyer will not, however, be entitled to receive this variation margin from its futures commission merchant (until the liquidation or final settlement of its CERF position). The buyer will be entitled to receive interest or other income on the assets it has deposited as

[11] ''Short-Term Securities'' means U.S. Treasury Securities or other short-term securities and similar securities, in each case that are eligible as margin deposits under the rules of the CME.

[12] Trading hours for CERFs on GLOBEX will be as follows: Sunday, 6 p.m. to 2:40 p.m. (next day) (New York Time); Monday to Thursday, 6 p.m. to 2:40 p.m. (next day) and 3 p.m. to 5 p.m. (New York Time).

margin or that are credited to the custody account on its behalf from time to time.

Upon liquidation or settlement of a CERF, a 100% margin participant will receive from its futures commission merchant its initial margin deposit, adjusted for variation margin paid or received by the futures commission merchant with respect to the contract during the time it was held by the participant (or the proceeds from liquidation of any investments made with such funds for the benefit of the participant under the terms of its custody arrangement with the carrying futures commission merchant).

The 100% margin participants will include any market participant that is (1) an investment company registered under the Investment Company Act or (2) an investment fund, commodity pool, or other similar type of pooled trading vehicle (other than a pension plan or fund) that is offered to the public pursuant to an effective registration statement filed under the Securities Act of 1933,[13] regardless of whether it is also registered under the Investment Company Act, and that has its principal place of business in the United States.

The Investing Pools will be a 100% margin participants. The Investing Pools will satisfy the 100% margin requirement by depositing with the Clearing FCM[14] cash or Short-Term Securities with a value equal to 100% of the value of each long position in CERFs.

According to the Registration Statements, CERFs also differ from traditional futures contracts in another significant respect. In contrast to other types of futures contracts, which are typically listed with monthly, bimonthly or quarterly expirations, CERFs will be listed only with approximately five-year expirations. A buyer or seller of CERFs will be able to trade CERFs on the market maintained by the CME and will consequently be able to liquidate its position at any time, subject to the existence of a liquid market. If a party to a CERF wishes to hold its position to expiration, however, it will be necessary to maintain the position for up to five years. According to the Registration Statements, as a CERF nears expiration, it is anticipated, but there can be no assurance, that the CME will list an additional CERF with an approximately five-year expiration.

[13] 15 U.S.C. 77a, *et seq.*

[14] The term ''Clearing FCM'' is defined in the Registration Statement as Goldman, Sachs & Co. or any other futures commission merchant appointed by the Manager as clearing futures commission merchant for the Investing Pool.

f. The S&P GSCI™ and S&P GS Indexes

The S&P GSCI™ itself is an index on a production-weighted basket of principal physical commodities that satisfy specified criteria. The S&P GSCI™ reflects the level of commodity prices at a given time and is designed to be a measure of the performance over time of the markets for these commodities. The commodities represented in the S&P GSCI™ are those physical commodities on which active and liquid contracts are traded on trading facilities in major industrialized countries. The commodities included in the S&P GSCI™ are weighted, on a production basis, to reflect the relative significance (in the view of the Index Sponsor) of those commodities to the world economy. The fluctuations in the level of the S&P GSCI™ are intended generally to correlate with changes in the prices of those physical commodities in global markets.

The Index Sponsor makes the official calculations of the value of the S&P GSCI™ and S&P GS Indexes. At present, these calculations are performed continuously and are reported on Reuters Pages GSCI (for S&P GSCI), GSNG (for S&P GS Natural Gas), GSCO (for S&P GS Industrial Metals), GSLE (for S&P GS Light Energy), GSCL (for S&P GS Livestock), GSCN (for S&P GS Non-Energy), and GSCP (for S&P GS Energy), and is updated on Reuters at least every 15 seconds during NYSE Arca Core Trading Session and during business hours on each Business Day on which the offices of the Index Sponsor in New York City are open for business. The calculation for each applicable Index is also updated on Reuters at least every 15 seconds. The settlement price for each Excess Return Index is also reported on the Reuters Pages noted above. If Reuters ceases to publish the value of the S&P GSCI or applicable S&P GS Index or the settlement price of the S&P GSCI™–ER or the Excess Return Indexes, the Index Sponsor has undertaken to use commercially reasonable efforts to ensure that a comparable reporting service publishes the S&P GSCI™ or applicable S&P GS Index and the applicable Excess Return Index so long as any Shares are outstanding.

g. The Index Committee and Index Advisory Panel

The Index Sponsor has established an Index Committee to oversee the daily management and operations of the S&P GSCI™, and is responsible for all analytical methods and calculations. The Index Committee is comprised of three full-time professional members of S&P's staff and two members of Goldman Sachs Group. At each meeting, the Index Committee reviews any issues that may affect index constituents, statistics comparing the composition of the indices to the market, commodities that are being considered as candidates for addition to an index, and any significant market events. In addition, the Index Committee may revise index policy covering rules for selecting commodities, or other matters.

S&P considers information about changes to its indices and related matters to be potentially market moving and material. Therefore, all Index Committee discussions are confidential.

In addition, the Index Sponsor has established an Index Advisory Panel to assist it with the operation of the S&P GSCI™. The principal purpose of the Index Advisory Panel is to advise the Index Sponsor with respect to, among other things, the calculation of the S&P GSCI™, the effectiveness of the S&P GSCI™ as a measure of commodity futures market performance and the need for changes in the composition or the methodology of the S&P GSCI™. The Index Advisory Panel acts solely in an advisory and consultative capacity. All decisions with respect to the composition, calculation and operation of the S&P GSCI™ are made by the Index Committee.

The Index Advisory Panel generally meets in October of each year. Prior to the meeting, the Index Sponsor determines the commodities to be included in the S&P GSCI™ for the following calendar year and the weighting factors for each commodity. The Index Advisory Panel's members receive the proposed composition of the S&P GSCI™ in advance of the meeting and discuss the composition at the meeting. The Index Sponsor also consults the Index Advisory Panel on any other significant matters with respect to the calculation and operation of the S&P GSCI™. The Index Advisory Panel may, if necessary or practicable, meet at other times during the year as issues arise that warrant its consideration.

h. Composition of the S&P GSCI™

In order to be included in the S&P GSCI™, and the S&P GS Indexes, a contract must satisfy the following eligibility criteria:

(1) The contract must:

(a) Be in respect of a physical commodity and not a financial commodity;

(b) have a specified expiration or term, or provide in some other manner for delivery or settlement at a specified

time, or within a specified period, in the future; and

(c) be available, at any given point in time, for trading at least five months prior to its expiration or such other date or time period specified for delivery or settlement.

(2) The commodity must be the subject of a contract that:

(a) Is denominated in U.S. dollars; and

(b) Is traded on or through an exchange, facility or other platform, referred to as a ''trading facility,'' that has its principal place of business or operations in a country that is a member of the Organization for Economic Cooperation and Development and:

i. Makes price quotations generally available to its members or participants (and, if the Index Sponsor is not such a member or participant, to the Index Sponsor) in a manner and with a frequency that is sufficient to provide reasonably reliable indications of the level of the relevant market at any given point in time;

ii. Makes reliable trading volume information available to the Index Sponsor with at least the frequency required by the Index Sponsor to make the monthly determinations;

iii. Accepts bids and offers from multiple participants or price providers; and

iv. Is accessible by a sufficiently broad range of participants.

(3) The price of the relevant contract that is used as a reference or benchmark by market participants, referred to as the ''daily contract reference price,'' generally must have been available on a continuous basis for at least two years prior to the proposed date of inclusion in the S&P GSCI™. In appropriate circumstances, however, the Index Sponsor may determine that a shorter time period is sufficient or that historical daily contract reference prices for that contract may be derived from daily contract reference prices for a similar or related contract. The daily contract reference price may be (but is not required to be) the settlement price or other similar price published by the relevant trading facility for purposes of margining transactions or for other purposes.

(4) At and after the time a contract is included in the S&P GSCI™, the daily contract reference price for that contract must be published between 10:00 a.m. and 4:00 p.m., New York Time, on each Business Day relating to that contract by the trading facility on or through which it is traded and must generally be available to all members of, or participants in, that trading facility (and, if the Index Sponsor is not such a member or participant, to the Index Sponsor) on the same day from the trading facility or through a recognized third-party data vendor. Such publication must include, at all times, daily contract reference prices for at least one expiration or settlement date that is five months or more from the date the determination is made, as well as for all expiration or settlement dates during that five-month period.

(5) Volume data with respect to the contract must be available for at least the three months immediately preceding the date on which the determination is made.

(6) A contract that is not included in the S&P GSCI™ at the time of determination and that is based on a commodity that is not represented in the S&P GSCI™ at that time must, in order to be added to the S&P GSCI™ at that time, have a total dollar value traded, over the relevant period, as the case may be and annualized, of at least $15 billion. The total dollar value traded is the dollar value of the total quantity of the commodity underlying transactions in the relevant contract over the period for which the calculation is made, based on the average of the daily contract reference prices on the last day of each month during the period.

(7) A contract that is already included in the S&P GSCI™ at the time of determination and that is the only contract on the relevant commodity included in the S&P GSCI™ must, in order to continue to be included in the S&P GSCI™ after that time, have a total dollar value traded, over the relevant period, as the case may be and annualized, of at least $5 billion and at least $10 billion during at least one of the three most recent annual periods used in making the determination.

(8) A contract that is not included in the S&P GSCI™ at the time of determination and that is based on a commodity on which there are one or more contracts already included in the S&P GSCI™ at that time must, in order to be added to the S&P GSCI™ at that time, have a total dollar value traded, over the relevant period, as the case may be and annualized, of at least $30 billion.

(9) A contract that is already included in the S&P GSCI™ at the time of determination and that is based on a commodity on which there are one or more contracts already included in the S&P GSCI™ at that time must, in order to continue to be included in the S&P GSCI™ after that time, have a total dollar value traded, over the relevant period, as the case may be and annualized, of at least $10 billion and at least $20 billion during at least one of the three most recent annual periods used in making the determination.

(10) A contract that is:

(a) Already included in the S&P GSCI™ at the time of determination must, in order to continue to be included after that time, have a reference percentage dollar weight of at least 0.10%. The ''reference percentage dollar weight'' of a contract represents the current value of the quantity of the underlying commodity that is included in the Index at a given time. This figure is determined by multiplying the contract production weight of a contract, or ''CPW,'' by the average of its daily contract reference prices on the last day of each month during the relevant period. These amounts are summed for all contracts included in the S&P GSCI™ and each contract's percentage of the total is then determined. The CPW of a contract is its weight in the Index.

(b) not included in the S&P GSCI™ at the time of determination must, in order to be added to the S&P GSCI™ at that time, have a reference percentage dollar weight of at least 0.75%.

(11) In the event that two or more contracts on the same commodity satisfy the eligibility criteria:

(a) Such contracts will be included in the S&P GSCI™ in the order of their respective total quantity traded during the relevant period (determined as the total quantity of the commodity underlying transactions in the relevant contract), with the contract having the highest total quantity traded being included first, provided that no further contracts will be included if such inclusion would result in the portion of the S&P GSCI™ attributable to that commodity exceeding a particular level.

(b) if additional contracts could be included with respect to several commodities at the same time, that procedure is first applied with respect to the commodity that has the smallest portion of the S&P GSCI™ attributable to it at the time of determination. Subject to the other eligibility criteria described above, the contract with the highest total quantity traded on that commodity will be included. Before any additional contracts on the same commodity or on any other commodity are included, the portion of the S&P GSCI™ attributable to all commodities is recalculated. The selection procedure described above is then repeated with respect to the contracts on the commodity that then has the smallest portion of the S&P GSCI™ attributable to it.

Beginning in 2007, in order for a contract to be included in the S&P

GSCI™, (1) the trading facility in which the contract is traded must allow market participants to execute spread transactions, through a single order entry, between the pairs of contract expirations included in the S&P GSCI™ that at any given point in time will be involved in the rolls to be effected in the next three roll periods and (2) a contract that is not included in the S&P GSCI™ at the time of determination must, in order to be added to the S&P GSCI™ at that time, have a reference percentage dollar weight of at least 1.00%.

The contracts currently included in the S&P GSCI™ are all futures contracts traded on the New York Mercantile Exchange, Inc. (''NYM''), the ICE Futures (''ICE'') and its subsidiary, the New York Board of Trade (''NYBOT''), the CME, the Chicago Board of Trade (''CBT''), the Coffee, Sugar & Cocoa Exchange, Inc. (''CSC''), the New York Cotton Exchange (''NYC''), the Kansas City Board of Trade (''KBT''), the COMEX Division of the New York Mercantile Exchange, Inc. (''CMX'') and the London Metal Exchange (''LME'').

The futures contracts currently included in the S&P GSCI™ Energy Index, Average Daily Trading Volume (''ADTV'') for January 2007 through July 2007, percentage dollar weights (as of August 13, 2007), market symbols and the exchanges on which they are traded are as follows:

Commodity	Weight 8/13/07 (percent)	ADTV (contracts)	Market symbol	Trading facility	Units
WTI Crude Oil	51.43	200,605	CL	NYM	1,000 index points.
Brent Crude Oil	20.86	235,918	LCO	ICE	1,000 barrels.
Natural Gas	10.23	111,548	NG	NYM	42,000 U.S. gallons.
Heating Oil	8.27	70,791	HO	NYM	42,000 U.S. gallons.
Gas Oil	7.39	88,417	LGO	ICE	100 metric tons.
RBOB Oil	1.82	79,665	RB	NYM	50,000 X PADD.

The futures contracts currently included in the S&P GSCI™ Natural Gas Index, ADTV for January 2007 through July 2007, percentage dollar weights (as of August 13, 2007), market symbols and the exchanges on which they are traded are as follows:

Commodity	Weight 8/13/07 (percent)	ADTV (contracts)	Market symbol	Trading facility	Units
Natural Gas	100.00	111,548	NG	NYM	42,000 U.S. gallons.

The futures contracts currently included in the S&P GSCI™ Industrial Metals Index, ADTV for January 2007 through July 2007, percentage dollar weights (as of August 13, 2007), market symbols and the exchanges on which they are traded are as follows:

Commodity	Weight 8/13/07 (percent)	ADTV (contracts)	Market symbol	Trading facility	Units
Copper	40.66	14,793	MCU	NYM	25,000 lbs.
Aluminum	30.14	155,886	MAL	LME	25 metric tons.
Primary Nickel	11.13	14,543	MNI	LME	6 metric tons.
Zinc	11.05	48,483	MZN	LME	25 metric tons.
Standard Lead	7.02	16,998	MPB	LME	25 metric tons.

The futures contracts currently included in the S&P GSCI™ Light Energy Index, ADTV for January 2007 through July 2007, percentage dollar weights (as of August 13, 2007), market symbols and the exchanges on which they are traded are as follows:

Commodity	Weight 8/13/07 (percent)	ADTV (contracts)	Market symbol	Trading facility	Units
WTI Crude Oil	18.97	200,605	CL	NYM	1,000 index points.
Copper	8.56	14,793	MCU	NYM	25,000 lbs.
Chicago Wheat	8.10	75,587	W	CBOT	5,000 bushels.
Brent Crude Oil	7.69	235,918	LCO	ICE	1,000 barrels.
Aluminum	6.35	155,886	MAL	LME	25 metric tons.
Corn	6.24	244,756	C	CBOT	5,000 bushels.
Live Cattle	5.50	36,530	LC	CME	40,000 lbs.
Gold	4.21	89,976	GC	NYM	100 troy ounces.
Soybeans	4.17	121,036	S	CBOT	5,000 bushels.
Natural Gas	3.77	111,548	NG	NYM	42,000 U.S. gallons.
Lean Hogs	3.16	30,698	LH	CME	40,000 lbs.
Heating Oil	3.05%	70,791	HO	NYM	42,000 U.S. gallons.
Kansas City Wheat	2.76	17,238	KW	KCE	5,000 bushels.

Commodity	Weight 8/13/07 (percent)	ADTV (contracts)	Market symbol	Trading facility	Units
Gas Oil	2.72	88,417	LGO	ICE	100 metric tons.
Nickel	2.34	14,543	MNI	LME	6 metric tons.
Zinc	2.33	48,483	MZN	LME	25 metric tons.
Sugar	2.17	90,166	SB	NYBOT	112,000 lbs.
Cotton	1.91	26,092	CT	NYBOT	50,000 lbs.
Coffee	1.51	20,383	KC	NYBOT	37,500 lbs.
Lead	1.48	16,998	MPB	LME	25 metric tons.
Feeder Cattle	1.32	4,416	FC	CME	50,000 lbs.
RBOB Gas	0.67	79,665	RB	NYM	50,000 X PADD.
Silver	0.57	24,292	SI	NYM	5,000 troy ounces.
Cocoa	0.45	13,397	CC	NYBOT	10 metric tons.

The futures contracts currently included in the S&P GSCI™ Livestock Index, ADTV for January 2007 through July 2007, percentage dollar weights (as of August 13, 2007), market symbols and the exchanges on which they are traded are as follows:

Commodity	Weight 8/13/07 (percent)	ADTV (contracts)	Market symbol	Trading facility	Units
Live Cattle	55.08	36,530	LC	CME	40,000 lbs.
Lean Hogs	31.72	30,698	LH	CME	40,000 lbs.
Feeder Cattle	13.20	4,416	FC	CME	50,000 lbs.

The futures contracts currently included in the S&P GSCI™ Non-Energy Index, ADTV for January 2007 through July 2007, percentage dollar weights (as of August 13, 2007), market symbols and the exchanges on which they are traded are as follows:

Commodity	Weight 8/13/07 (percent)	ADTV (contracts)	Market symbol	Trading facility	Units
Copper	13.56	14,793	MCU	NYM	25,000 lbs.
Chicago Wheat	12.83	75,587	W	CBOT	5,000 bushels.
Aluminum	10.06	155,886	MAL	LME	25 metric tons.
Corn	9.89	244,756	C	CBOT	5,000 bushels.
Live Cattle	8.71	36,530	LC	CME	40,000 lbs.
Gold	6.66	89,976	GC	NYM	100 troy ounces.
Soybeans	6.61	121,036	S	CBOT	5,000 bushels.
Lean Hogs	5.01	30,698	LH	CME	40,000 lbs.
Kansas City Wheat	4.37	17,238	KW	KCE	5,000 bushels.
Nickel	3.71	14,543	MNI	LME	6 metric tons.
Zinc	3.69	48,483	MZN	LME	25 metric tons.
Sugar	3.44	90,166	SB	NYBOT	112,000 lbs.
Cotton	3.03	26,092	CT	NYBOT	50,000 lbs.
Coffee	2.39	20,383	KC	NYBOT	37,500 lbs.
Lead	2.34	16,998	MPB	LME	25 metric tons.
Feeder Cattle	2.09	4,416	FC	CME	50,000 lbs.
Silver	0.90	24,292	SI	NYM	5,000 troy ounces.
Cocoa	0.71	13,397	CC	NYBOT	10 metric tons.

The hours of trading (New York Time) of the commodities in the charts above are as follows:

Commodity	Trading facility	Trading hours (NY time)
Crude Oil	NYM	10 a.m.–2:30 p.m.
Brent Crude Oil	ICE	8 p.m.–5 p.m. (next day).
Natural Gas	NYM	10 a.m.–2:30 p.m.
Heating Oil	NYM	10:05 a.m.–2:30 p.m.
RBOB Gasoline	NYM	10:05 a.m.–2:30 p.m.
Gas Oil	ICE	8 p.m.–5 p.m. (next day).
Live Cattle	CME	10:05 a.m.–2 p.m.
Wheat	CBT	10:30 a.m.–2:15 p.m.
Aluminum	LME	6:55 a.m.–12 p.m.

Commodity	Trading facility	Trading hours (NY time)
Corn	CBT	10:30 a.m.–2:15 p.m.
Copper	LME	7 a.m.–12 p.m.
Soybeans	CBT	10:30 a.m.–2:15 p.m.
Lean Hogs	CME	9:10 a.m.–1 p.m.
Gold	CMX	8:20 a.m.–1:30 p.m.
Sugar	CSC	9 a.m.–12 p.m.
Cotton	NYC	10:30 a.m.–2:15 p.m.
Red Wheat	KBT	10:30 a.m.–2:15 p.m.
Coffee	CSC	9:15 a.m.–12:30 p.m.
Standard Lead	LME	7:05 a.m.–11:50 a.m.
Feeder Cattle	CME	10:05 a.m.– 2 p.m.
Zinc	LME	7:10 a.m.–11:55 a.m.
Primary Nickel	LME	7:10 a.m.–11:55 a.m.
Cocoa	CSC	8 a.m.–11:50 a.m.
Silver	CMX	8:25 a.m.–1:25 p.m.

The quantity of each of the contracts included in the S&P GSCI™ is determined on the basis of a five-year average, referred to as the ''world production average,'' of the production quantity of the underlying commodity as published by the United Nations Statistical Yearbook, the Industrial Commodity Statistics Yearbook and other official sources. However, if a commodity is primarily a regional commodity, based on its production, use, pricing, transportation or other factors, the Index Sponsor, may calculate the weight of that commodity based on regional, rather than world, production data. At present, natural gas is the only commodity the weights of which are calculated on the basis of regional production data, with the relevant region defined as North America.

The five-year moving average is updated annually for each commodity included in the S&P GSCI™, based on the most recent five-year period (ending approximately two years prior to the date of calculation and moving backwards) for which complete data for all commodities is available. The CPWs used in calculating the S&P GSCI™ are derived from world or regional production averages, as applicable, of the relevant commodities, and are calculated based on the total quantity traded for the relevant contract and the world or regional production average, as applicable, of the underlying commodity. However, if the volume of trading in the relevant contract, as a multiple of the production levels of the commodity, is below specified thresholds, the CPW of the contract is reduced until the threshold is satisfied. This is designed to ensure that trading in each contract is sufficiently liquid relative to the production of the commodity.

In addition, the Index Sponsor performs this calculation on a monthly basis and, if the multiple of any contract is below the prescribed threshold, the composition of the S&P GSCI™ is reevaluated, based on the criteria and weighting procedure described above. This procedure is undertaken to allow the S&P GSCI™ to shift from contracts that have lost substantial liquidity into more liquid contracts during the course of a given year. As a result, it is possible that the composition or weighting of the S&P GSCI™ will change on one or more of these monthly evaluation dates. The likely circumstances under which the Index Sponsor would be expected to change the composition of the Index during a given year, however, are (1) a substantial shift of liquidity away from a contract included in the Index or its subsidiaries as described above, or (2) an emergency, such as a natural disaster or act of war or terrorism, that causes trading in a particular contract to cease permanently or for an extended period of time. In either event, the Index Sponsor will consult with the Index Committee in connection with the changes to be made and will publish the nature of the changes, through Web sites, news media or other outlets, with as much prior notice to market participants as is reasonably practicable. Moreover, regardless of whether any changes have occurred during the year, the Index Sponsor reevaluates the composition of the S&P GSCI™, in consultation with its Index Committee, at the conclusion of each year, based on the above criteria. Other commodities that satisfy that criteria, if any, will be added to the S&P GSCI™. Commodities included in the S&P GSCI™ that no longer satisfy that criteria, if any, will be deleted.

The Index Sponsor also determines whether modifications in the selection criteria or the methodology for determining the composition and weights of and for calculating the S&P GSCI™ are necessary or appropriate in order to assure that the S&P GSCI™ represents a measure of commodity market performance. The Index Sponsor has the discretion to make any such modifications.

i. Total Dollar Weight of the S&P GSCI and S&P GS Indexes

The total dollar weight of the S&P GSCI™ and each S&P GS Index is the sum of the dollar weight of each of the underlying commodities. The dollar weight of each such commodity on any given day is equal to:

- The daily contract reference price;
- Multiplied by the appropriate CPW; and
- During a roll period, the appropriate ''roll weights''(discussed below).

The daily contract reference price used in calculating the dollar weight of each commodity on any given day is the most recent daily contract reference price made available by the relevant trading facility, except that the daily contract reference price for the most recent prior day will be used if the exchange is closed or otherwise fails to publish a daily contract reference price on that day. In addition, if the trading facility fails to make a daily contract reference price available or publishes a daily contract reference price that, in the reasonable judgment of the Index Sponsor, reflects manifest error, the relevant calculation will be delayed until the price is made available or corrected; provided, that, if the price is not made available or corrected by 4 p.m. New York Time, the Index Sponsor may, if it deems that action to be appropriate under the circumstances, determine the appropriate daily contract reference price for the applicable futures contract in its reasonable judgment for purposes of the relevant Index calculation.

j. Calculation of Total Return Indexes

The Total Return Indexes to which the performance of the Shares is linked

were established in May of 1991, with the exception of the S&P GSCI™ Light Energy Total Return Index, which was established in April, 2004. Each Total Return Index reflects the return of the applicable Excess Return Index, together with the return on specified U.S. Treasury securities that are deemed to have been held to collateralize a hypothetical long position in the futures contracts comprising the applicable S&P GS Index.

k. Calculation of the Excess Return Indexes

Because futures contracts have scheduled expirations, or delivery months, as one contract nears expiration it becomes necessary to close out the position in that delivery month and establish a position in the next available delivery month. This process is referred to as ''rolling'' the position forward. Each Excess Return Index is designed to reflect the return from rolling each contract included in the S&P GSCI™ or applicable S&P GS Index in this manner into the next available delivery month as it nears expiration. This is accomplished by selling the position in the first delivery month and purchasing a position of equivalent value in the second delivery month. If the price of the second contract is lower than the price of the first contract, the ''rolling'' process results in a greater quantity of the second contract being acquired for the same value. Conversely, if the price of the second contract is higher than the price of the first contract, the ''rolling'' process results in a smaller quantity of the second contract being acquired for the same value.

The value of each Excess Return Index on any S&P GSCI™ Business Day is equal to the product of (1) the value of the applicable Excess Return Index on the immediately preceding S&P GSCI™ Business Day multiplied by (2) one plus the contract daily return on the S&P GSCI™ Business Day on which the calculation is made.

The value of each Total Return Index on any S&P GSCI™ Business Day is equal to the product of (1) the value of the Index on the immediately preceding S&P GSCI™ Business Day multiplied by (2) one plus the sum of the contract daily return [15] and the Treasury bill return on the S&P GSCI™ Business Day on which the calculation is made, multiplied by (3) one plus the Treasury bill return for each non-S&P GSCI™ Business Day since the immediately preceding S&P GSCI™ Business Day. The Treasury bill return is the return on a hypothetical investment at a rate equal to the interest rate on a specified U.S. Treasury bill.

2. Valuation of CERFs; Computation of Trusts' Net Asset Value

On each Business Day on which the NYSE is open for regular trading, as soon as practicable after the close of regular trading of the Shares on the NYSE (normally, 4:15 p.m., New York Time), the Trustee will determine the NAV of the Trusts as of that time.

The Trustee will value the Trusts' assets based upon the determination by the Manager, which may act through the Investing Pool Administrator, of the net asset value of the Investing Pool. The Manager will determine the net asset value of the Investing Pool as of the same time that the Trustee determines the net asset value of the Trusts.

The Manager will value the Investing Pools' long position in CERFs on the basis of that day's announced CME settlement price for the CERFs. The value of the Investing Pools' CERF position (including any related margin) will equal the product of (a) the number of CERF contracts owned by the particular Investing Pool and (b) the settlement price on the date of calculation. If there is no announced CME settlement price for the CERF on a Business Day, the Manager will use the most recently announced CME settlement price unless the Manager determines that that price is inappropriate as a basis for evaluation.[16] The daily settlement price for the CERF is established by the CME shortly after the close of trading in Chicago on each trading day.

Once the value of the CERFs and interest earned on any assets posted as margin and any other assets of the Investing Pool has been determined, the Manager will subtract all accrued expenses and liabilities of each Investing Pool as of the time of calculation in order to calculate the net asset value of the Investing Pool. The Manager, or the Investing Pool Administrator on its behalf, will then calculate the value of the applicable Trust's Investing Pool Interest and provide this information to the Trustee.

Once the value of the Trusts' Investing Pool Interests have been determined and provided to the Trustee, the Trustee will subtract all accrued expenses and other liabilities of each Trust from the total value of the assets of the Trust, in each case as of the calculation time. The resulting amount is the net asset value of the Trust. The Trustee will determine the NAV by dividing the net asset value of the Trust by the number of Shares outstanding at the time the calculation is made.

The NAV for each Business Day on which the NYSE is open for regular trading will be distributed through major market data vendors and will be published online at *http://www.ishares.com*, or any successor thereto. The Trusts will update the NAV as soon as practicable after each subsequent NAV is calculated.

3. Creations of Baskets

According to the Registration Statements, creation and redemption of interests in the Trusts, and the corresponding creation and redemption of interests in the respective Investing Pools, will generally be effected through transactions in ''exchanges of futures for physicals,'' or ''EFPs.'' EFPs involve contemporaneous transactions in futures contracts and the underlying cash commodity or a closely related commodity. In a typical EFP, the buyer of the futures contract sells the underlying commodity to the seller of the futures contract in exchange for a cash payment reflecting the value of the commodity and the relationship between the price of the commodity and the related futures contract. According to the Registration Statements, in the context of CERFs, CME rules permit the execution of EFPs consisting of simultaneous purchases (sales) of CERFs and sales (purchases) of Shares. This mechanism will generally be used by the Trusts in connection with the creation and redemption of Baskets. Specifically, it is anticipated that an Authorized Participant (as described

[15] The contract daily return on any given day is equal to the sum, for each of the commodities included in the S&P GSCI™ or the applicable S&P GS Index, of the applicable daily contract reference price on the relevant contract multiplied by the appropriate CPW and the appropriate ''roll weight,'' divided by the total dollar weight of the such Index on the preceding day, minus one.

The ''roll weight'' of each commodity reflects the fact that the positions in contracts must be liquidated or rolled forward into more distant contract expirations as they near expiration. If actual positions in the relevant markets were rolled forward, the roll would likely need to take place over a period of days. Since the S&P GSCI™ and S&P GS Indexes are designed to replicate the performance of actual investments in the underlying contracts, the rolling process incorporated in such Indexes also takes place over a period of days at the beginning of each month, referred to as the ''roll period.'' On each day of the roll period, the ''roll weights'' of the first nearby contract expirations on a particular commodity and the more distant contract expiration into which it is rolled are adjusted, so that the hypothetical position in the contract on the commodity that is included in the applicable Index is gradually shifted from the first nearby contract expiration to the more distant contract expiration.

[16] The Exchange states that the Manager's use of a price that is not the most recently announced CME settlement price, other than on a temporary basis based on extraordinary circumstances, would require Commission approval of an Exchange proposed rule change pursuant to Rule 19b–4.

below) requesting the creation of additional Baskets typically will transfer CERFs and cash (or, in the discretion of the Trustee, Short-Term Securities in lieu of cash) to the Trusts in return for Shares. Baskets may be created and redeemed only by Authorized Participants. Each Authorized Participant must: (1) Be a registered broker-dealer and, if required in connection with its activities, a registered futures commission merchant; (2) be a DTC Participant; (3) have entered into an Authorized Participant Agreement; and (4) be in a position to transfer CERFs and the required cash or Short-Term Securities to, and take delivery of these assets from, the Trustee through one or more accounts.

The Trusts will simultaneously contribute to the Investing Pools the CERFs (and any cash or securities) received from the Authorized Participant in return for an increase in its Investing Pool Interests. If an EFP is executed in connection with the redemption of one or more Baskets, an Authorized Participant will transfer to the applicable Trust the interests being redeemed and the Trust will transfer to the Authorized Participant CERFs, cash or Short-Term Securities. In order to obtain the CERFs, cash or Short-Term Securities to be transferred to the Authorized Participant, the Trust will redeem an equivalent portion of its interest in the Investing Pool Interests.

The Trusts will offer Shares on a continuous basis on each Business Day, but only in Baskets consisting of 50,000 Shares. Baskets will be typically issued only in exchange for an amount of CERFs and cash (or, in the discretion of the Trustee, Short-Term Securities in lieu of cash) equal to the Basket Amount [17] for the Business Day on which the creation order was received by the Trustee. The Basket Amount for a Business Day will have a per Share value equal to the NAV as of such day. However, orders received by the Trustee after 2:40 p.m., New York Time, will be treated as received on the next following Business Day. The Trustee will notify the Authorized Participants of the Basket Amount on each Business Day.

Before the Trusts will issue any Baskets to an Authorized Participant, that Authorized Participant must deliver to the Trustee a creation order indicating the number of Baskets it intends to purchase and providing other details with respect to the procedures by which the Baskets will be transferred. The Trustee will acknowledge the creation order unless it or the Sponsor decides to refuse the order as described in the prospectus.

Upon the transfer of (1) the required consideration of CERFs and cash (or, in the discretion of the Trustee, Short-Term Securities in lieu of cash) in the amounts, and to the accounts, specified by the Trustee, and (2) the Trustee's transaction fee per Basket (described below), the Trustee will deliver the appropriate number of Baskets to the Depository Trust Company (''DTC'') account of the Authorized Participant. In limited circumstances and with the approval of the Trustee, Baskets may be created for cash, in which case the Authorized Participant will be required to pay any additional issuance costs, including the costs to the applicable Investing Pool of establishing the corresponding CERF position.

Only Authorized Participants can transfer the required consideration and receive Baskets in exchange. Authorized Participants may act for their own accounts or as agents for broker-dealers, custodians and other securities market participants that wish to create or redeem Baskets. An Authorized Participant will have no obligation to create or redeem Baskets for itself or on behalf of other persons. An order for one or more baskets may be placed by an Authorized Participant on behalf of multiple clients. The Sponsor and the Trustee will maintain a current list of Authorized Participants.

No Shares will be issued unless and until the Trustee receives confirmation that (1) the required consideration has been received in the account or accounts specified by the Trustee and (2) the Manager confirms that Investing Pool Interests with an initial value equal to the consideration received for the Shares have been issued to the Trust. It is expected that delivery of the Shares will be made against transfer of consideration on the next Business Day (T+1) following the Business Day on which the creation order is received by the Trustee. If the Trustee has not received the required consideration for the Shares to be delivered on the delivery date, by 11 a.m., New York Time, the Trustee may cancel the creation order.[18]

4. Redemptions of Baskets

Authorized Participants may typically surrender Baskets in exchange only for an amount of CERFs and cash (or, in the discretion of the Trustee, Short-Term Securities in lieu of cash) equal to the Basket Amount on the Business Day the redemption request is received by the Trustee. However, redemption requests received by the Trustee after 2:40 p.m., New York Time (or, on any day on which the CME is scheduled to close early, after the close of trading of CERFs on the CME on such day), will be treated as received on the next following Business Day. Holders of Baskets who are not Authorized Participants will be able to redeem their Baskets only through an Authorized Participant. It is expected that Authorized Participants may redeem Baskets for their own accounts or on behalf of Shareholders who are not Authorized Participants, but they are under no obligation to do so.

Before surrendering Baskets for redemption, an Authorized Participant must deliver to the Trustee a written request indicating the number of Baskets it intends to redeem and providing other details with respect to the procedures by which the required Basket Amount will be transferred. The Trustee will acknowledge the redemption order unless it or the Sponsor decides to refuse the redemption order as described in the Trusts' prospectuses.

After the delivery by the Authorized Participant to the Trustee's DTC account of the total number of Shares to be redeemed by an Authorized Participant, the Trustee will deliver to the order of the redeeming Authorized Participant redemption proceeds consisting of CERFs and cash (or, in the discretion of the Trustee, Short-term Securities in lieu of cash). In connection with a redemption order, the redeeming Authorized Participant authorizes the Trustee to deduct from the proceeds of redemption a transaction fee per Basket (described below). In limited circumstances and with the approval of the Trustee, Baskets may be redeemed for cash, in which case the Authorized Participants will be required to pay any additional redemption costs, including the costs to the Investing Pool of liquidating the corresponding CERF position. The Trust will receive these redemption proceeds pursuant to the Trust's contemporaneous redemption of Investing Pool Interests of

[17] The Basket Amount represents the amount of CERFs and cash (or, in the discretion of the Sponsor, Short-Term Securities in lieu of cash), that an Authorized Participant must transfer in exchange for one Basket, or that an Authorized Participant is entitled to receive in exchange for each Basket surrendered for redemption. The value of the Basket Amount will equal the product of the NAV per Share and the number of Shares constituting a Basket, in each case as of the time of determination.

[18] The price at which the Shares trade should be disciplined by arbitrage opportunities created by the ability to purchase or redeem shares of the Trust in Basket size. This should help ensure that the Shares will not trade at a material discount or premium to their net asset value or redemption value.

corresponding value. Shares can be surrendered for redemption only in Baskets consisting of 50,000 Shares each.

It is expected that delivery of the CERFs, cash or Short-term Securities to the redeeming Shareholder will be made against transfer of the Baskets on the next Business Day following the Business Day on which the redemption request is received by the Trustee. If the Trustee's DTC account has not been credited with the total number of Shares to be redeemed pursuant to the redemption order by 11 a.m., New York Time, on the delivery date, the Trustee may cancel the redemption order.

DTC will accept the Shares for settlement through its book-entry settlement system. Shares do not have any voting rights.

5. Fees and Expenses of the Trustee

Each order for the creation of Baskets must be accompanied by a payment to the Trustee of a transaction fee per Basket of $6.50 multiplied by the number of CERFs included in the Basket Amount. For redemption orders, the redeeming Authorized Participant will authorize the Trustee to deduct from the proceeds of the redemption a transaction fee per Basket equal to $6.50 multiplied by the number of CERFs included in the Basket Amount, plus any expenses, taxes or charges (such as stamp taxes or stock transfer taxes or fees) related to the creation or surrender for redemption. The creation and redemption transaction fee per basket is subject to modification from time to time.

The Trustee will be entitled to reimburse itself from the assets of the Trusts for all expenses and disbursements incurred by it for extraordinary services it may provide to the Trusts or in connection with any discretionary action the Trustee may take to protect the Trusts or the interests of the holders to the extent not paid by the Sponsor.

6. Dissemination of Information Relating to the Shares

The Web site for the Trusts (*http://www.ishares.com*), which will be publicly accessible at no charge, will contain the following information: (a) The prior Business Day's NAV on a per Share basis and the reported closing price; (b) the mid-point of the bid-ask price [19] in relation to the NAV as of the time the NAV is calculated (the ''Bid-Ask Price''); (c) calculation of the premium or discount of such price against such NAV; (d) data in chart form displaying the frequency distribution of discounts and premiums of the Bid-Ask Price against the NAV, within appropriate ranges for each of the four previous calendar quarters; (e) the prospectus; (f) the holdings of the Trusts, including CERFs, cash and Treasury securities; (g) the Basket Amount, and (h) other applicable quantitative information. The Exchange on its Web site at *http://www.nyse.com* will include a hyperlink to the Trusts' Web site at *http://www.ishares.com.*

As described above, the NAV for the Fund will be calculated and disseminated daily. In addition, during the NYSE Arca Core Trading Session (9:30 a.m. to 4:15 p.m., New York Time) for the Trusts, one or more major market data vendors will disseminate information with respect to the Indicative Intra-day Value (as discussed below), recent NAV, and Shares outstanding on a daily basis.

The Sponsor for the Trusts (Barclays Global Investors International, Inc.) has represented to the Exchange that the Trustee for the Trusts will make the NAV per Share available to all market participants at the same time.

At present, official calculation by the Index Sponsor of the value of each GS Index is performed continuously and is updated on Reuters at least every 15 seconds during NYSE trading hours for the Shares and during business hours on each Business Day (as defined above) on which the offices of the Index Sponsor in New York City are open for business. In the event that the Exchange is open for business on a day that is not an S&P GSCI Business Day, the Exchange will not permit trading of the Shares on that day.

In addition, values updated at least every 15 seconds are disseminated on Reuters for the Total Return Indexes during Exchange trading hours. Daily settlement values for the S&P GSCI and S&P GS Indexes, Total Return Indexes and Excess Return Indexes are also widely disseminated.

If the relevant trading facility fails to make a daily contract reference price available or publishes a daily contract reference price that, in the reasonable judgment of the Index Sponsor, reflects manifest error, the relevant calculation will be delayed until the price is made available or corrected; provided, that, if the price is not made available or corrected by 4 p.m. New York Time, the Index Sponsor may, if it deems that action to be appropriate under the circumstances, determine the appropriate daily contract reference price for the applicable futures contract in its reasonable judgment for purposes of the relevant calculation. If such actions by the Index Sponsor are implemented on more than a temporary basis, the Exchange will contact the Commission Staff and, as necessary, make an appropriate filing under Rule 19b–4.

Various data vendors and news publications publish futures prices and data. Futures quotes and last sale information for the commodities underlying the Index are widely disseminated through a variety of market data vendors worldwide, including Bloomberg and Reuters. In addition, complete real-time data for such futures is available by subscription from Reuters and Bloomberg. The futures exchanges or which the underlying commodities and CERFs trade also provide delayed futures information on current and past trading sessions and market news generally free of charge on their respective Web sites. The specific contract specifications for the futures contracts are also available from the futures exchanges on their Web sites as well as other financial informational sources.

7. Indicative Intra-day Value

In order to provide updated information relating to the Trusts for use by investors, professionals, and other persons, one or more major market data vendors will disseminate an updated Indicative Intra-day Value (''IIV'') on a per Share basis. The IIV will be disseminated at least every 15 seconds from 9:30 a.m. to 4:15 p.m., New York Time. The IIV will be calculated based on the cash and collateral in a Basket Amount divided by 50,000, adjusted to reflect the market value of the investments held by the applicable Investing Pool, *i.e.* CERFs. The IIV will not reflect price changes to the price of an underlying commodity between the close of trading of the futures contract at the relevant futures exchange and the close of the Core Trading Session on NYSE Arca at 4:15 p.m. New York Time. The value of a Share may accordingly be influenced by non-concurrent trading hours between NYSE Arca and the various futures exchanges on which the futures contracts based on the Index commodities are traded. The table above lists the trading hours for each of the Index commodities underlying the futures contracts.

When the market for futures trading for each of the relevant Index commodities is open, the IIV can be expected to approximate the value per Share of the Basket Amount. IIV on a per Share basis disseminated during the NYSE Arca Core Trading Session should

[19] The bid-ask price of Shares is determined using the highest bid and lowest offer as of the time of calculation of the NAV.

not be viewed as a real time update of the NAV, which is calculated only once a day.

8. Other Characteristics of the Shares

General Information. A minimum of two Baskets, representing 100,000 Shares, will be outstanding for each Trust at the commencement of trading on the Exchange.

The trading hours for the Shares on the Exchange are the same as those set forth in NYSE Arca Equities Rule 7.34 (Opening, Core Trading, and Late Trading Sessions, 4 a.m. to 8 p.m., New York Time). The minimum trading increment for Shares on the Exchange will be $0.01.

Continued Listing Criteria. Under the applicable continued listing criteria, the Shares may be delisted as follows: (1) Following the initial twelve-month period beginning upon the commencement of trading of the Shares, there are fewer than 50 record and/or beneficial holders of the Shares for 30 or more consecutive trading days; (2) the value of the Total Return Indexes cease to be calculated by or available from a major market data vendor on at least a 15-second basis from a source unaffiliated with the Sponsor, the Trust or the Trustee; (3) the IIV ceases to be available on at least a 15-second delayed basis from a major market data vendor; or (4) such other event shall occur or condition exist that, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable. The Exchange will remove Shares from listing and trading upon termination of the Trust.

In addition, the Exchange will file a proposed change pursuant to Rule 19b–4 under the Act seeking approval to continue trading the Shares and, unless approved, the Exchange will commence delisting the Shares, if: (1) The Index Sponsor substantially changes either the applicable Index component selection methodology or the weighting methodology; (2) a new component is added to the Index (or pricing information is used for a new or existing component) that constitutes more than 10% of the weight of the Index with whose principal trading market the Exchange does not have a comprehensive surveillance sharing agreement; (3) the Manager uses a price to value the Investing Pool's long position in CERFs based on a price other than the most recently announced CME settlement price, other than on a temporary basis based on extraordinary circumstances; or (4) a successor or substitute index is used in connection with the Shares. With respect to the successor or substitute index, the Rule 19b–4 filing will address, among other things, the listing and trading characteristics of such index and the Exchange's surveillance procedures applicable thereto.

9. Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Trading in the Shares on the Exchange will occur in accordance with NYSE Arca Equities Rule 7.34(a). The Exchange has appropriate rules to facilitate transactions in the Shares during this time.

Further, NYSE Arca Equities Rules 8.203(g)–(i) sets forth certain restrictions on equity trading permit holders (''ETP Holders'') acting as registered Market Makers in Commodity Index Trust Shares to facilitate surveillance. NYSE Arca Equities Rule 8.203(h) requires that the ETP Holder acting as a registered Market Maker in the Shares provide the Exchange with information relating to its trading in the applicable physical commodities included in, or options, futures or options on futures on, the applicable Index or any other derivatives based on the Index. NYSE Arca Equities Rule 8.203(i) prohibits the ETP Holder acting as a registered Market Maker in the Shares from using any material nonpublic information received from any person associated with an ETP Holder or employee of such person regarding trading by such person or employee in the applicable physical commodities included in, or options, futures or options on futures on, the Index or any other derivatives based on the Index (including the Shares). In addition, as stated above, NYSE Arca Equities Rule 8.203(g) prohibits the ETP Holder acting as a registered Market Maker in the Shares from being affiliated with a market maker in the applicable physical commodities included in, or options, futures or options on futures on, the Index or any other derivatives based on the Index unless adequate information barriers are in place, as provided in NYSE Arca Equities Rule 7.26.

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading on the Exchange in the Shares may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in CERFs or the futures contracts included in the applicable Index or Indexes; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Shares will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's ''circuit breaker'' rule.[20] If the value of the Total Return Index associated with a Trust's Shares or the applicable IIV is not being disseminated on at least a 15 second basis during the hours the Shares trade on the Exchange, the Exchange may halt trading during the day in which the interruption to the dissemination of the IIV or the Index value occurs. If the interruption to the dissemination of the IIV or the Index value persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. Additionally, if the Exchange becomes aware that the NAV is not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants.

As a general matter, the Exchange has regulatory jurisdiction over its ETP Holders and any person or entity controlling an ETP Holder. The Exchange also has regulatory jurisdiction over a subsidiary or affiliate of an ETP Holder that is in the securities business. A subsidiary or affiliate of an ETP Holder that does business only in commodities or futures contracts would not be subject to Exchange jurisdiction, but the Exchange could obtain certain information regarding the activities of such subsidiary or affiliate through surveillance sharing agreements with regulatory organizations of which such subsidiary or affiliate is a member.

10. Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules.

The Exchange's current trading surveillances focus on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations. The Exchange is able to obtain information regarding trading in the Shares, the physical commodities

[20] *See* NYSE ARCA Equities Rule 7.12.

included in, or options, futures or options on futures on, an index underlying an issue of Commodity Index Trust Shares or any other derivatives based on such index, through ETP Holders, in connection with such ETP Holders' proprietary or customer trades which they effect on any relevant market. With regard to the Index components, the Exchange can obtain market surveillance information, including customer identity information, with respect to transactions occurring on the NYM, the Kansas City Board of Trade, ICE and the LME, pursuant to its comprehensive information sharing agreements with each of those exchanges. All of the other trading venues on which current Index components are traded are members of the Intermarket Surveillance Group (''ISG'') and the Exchange therefore has access to all relevant trading information with respect to those contracts without any further action being required on the part of the Exchange. A list of ISG members and affiliate members is available at *http://www.isgportal.com.*

In addition, the Exchange will file a proposed change pursuant to Rule 19b–4 under the Act seeking approval to continue trading the Shares if the Index Sponsor adds a new component to an Index (or pricing information is used for a new or existing component) that constitutes more than 10% of the weight of the Index where the principal trading market for such component is not a member or affiliate of ISG or where the Exchange does not have a comprehensive surveillance sharing agreement with such market.

11. Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares, including risks inherent with trading the Shares during the Opening and Late Trading Sessions when the updated IIV is not calculated and disseminated and suitability recommendation requirements.

Specifically, the Information Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Baskets; (2) NYSE Arca Equities Rule 9.2(a),[21] which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) how information regarding the IIV is disseminated; (4) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (5) trading information. For example, the Information Bulletin will advise ETP Holders, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Trusts. The Exchange notes that investors purchasing Shares directly from the Trusts (by delivery of the Basket Amount) will receive a prospectus. ETP Holders purchasing Shares from the Trusts for resale to investors will deliver a prospectus to such investors.

In addition, the Information Bulletin will reference that the Trusts are subject to various fees and expenses described in the Registration Statements. The Information Bulletin will also reference the fact that there is no regulated source of last sale information regarding physical commodities, that the Commission has no jurisdiction over the trading of physical commodities or the futures contracts on which the value of the Shares is based.

12. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under section 6(b)(5)[22] that an Exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

The Commission is considering granting accelerated approval of the proposed rule change at the end of a 15-day comment period.[23]

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–NYSEArca–2007–91 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2007–91. 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/*

[21] NYSE Arca Equities Rule 9.2(a) (''Diligence as to Accounts'') provides that ETP Holders, before recommending a transaction, must have reasonable grounds to believe that the recommendation is suitable for the customer based on any facts disclosed by the customer as to his other security holdings and as to his financial situation and needs. Further, the rule provides, with a limited exception, that prior to the execution of a transaction recommended to a non-institutional customer, the ETP Holders shall make reasonable efforts to obtain information concerning the customer's financial status, tax status, investment objectives, and any other information that they believe would be useful to make a recommendation. *See* Securities Exchange Act Release No. 54026 (June 21, 2006), 71 FR 36850 (June 28, 2006) (SR–PCX–2005–115).

[22] 15 U.S.C. 78f(b)(5).

[23] NYSE Arca requested accelerated approval of this proposed rule change prior to the 30th day after the date of publication of the notice of the filing thereof.

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 Number SR–NYSEArca–2007–91 and should be submitted on or before March 6, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–3042 Filed 2–19–08; 8:45 am]

BILLING CODE 8011–01–P

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57320; File No. SR–NYSEArca–2008–15]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Continue To List and Trade the Shares of the iShares MSCI Mexico Index Fund

February 13, 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 January 28, 2008, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange''), through its wholly owned subsidiary, NYSE Arca Equities, Inc. (''NYSE Arca Equities''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. NYSE Arca filed the proposal pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to continue to list and trade the shares (''Shares'') of the iShares MSCI Mexico Index Fund (''Fund''). The Fund seeks to provide investment results that correspond generally to the price and yield performance, before fees and expenses, of publicly traded securities in the aggregate in the Mexican market, as represented by the MSCI Mexico Investable Market Index (''Index''). The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and www.nyse.com.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to continue to list and trade the Shares of the Fund under NYSE Arca Equities Rule 5.2(j)(3), the Exchange's listing standards for Investment Company Units (''ICUs'').[5] Although the Shares are currently listed and traded on NYSE Arca, the Exchange submits this proposed rule change because, as a result of revisions to the methodology for calculating the Index that were implemented on December 1, 2007, the Shares no longer satisfy all of the ''generic'' listing requirements of Commentary .01(a)(B) to NYSE Arca Equities Rule 5.2(j)(3) applicable to ICUs based on an international or global index or portfolio.[6]

Specifically, the revised Index fails to satisfy the provisions of Commentary .01(a)(B)(3) to NYSE Arca Equities Rule 5.2(j)(3), which requires that: (1) The most heavily weighted component shall not exceed 25% of the weight of the Index; and (2) the five most heavily weighted component stocks shall not exceed 60% of the weight of the Index.[7] The Exchange represents that, except for Commentary .01(a)(B)(3) to NYSE Arca Equities Rule 5.2(j)(3), the Shares currently satisfy all of the generic listing standards under NYSE Arca Equities Rule 5.2(j)(3), and the continued listing standards under NYSE Arca Equities Rules 5.2(j)(3) and 5.5(g)(2) applicable to ICUs continue to apply to the Shares. The Exchange further represents that iShares, Inc. is required to comply with Rule 10A–3 under the Act[8] for the initial and continued listing of the Shares.

Detailed descriptions of the Fund, Index (including the methodology used to determine the composition of the Index), procedures and payment requirements for creating and redeeming Shares, transaction fees and expenses, dividends, distributions, taxes, and reports to be distributed to beneficial owners of the Shares can be found in the Registration Statement[9] or on the Internet Web site for the Fund (http://www.iShares.com), as applicable.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] ICUs are securities that represent an interest in a registered investment company or similar entity that (1) holds securities comprising, or otherwise based on or representing an interest in, an index or portfolio of securities, or (2) holds securities in another registered investment company that holds securities comprising, or otherwise based on or representing an interest in, an index or portfolio of securities. *See* NYSE Arca Equities Rule 5.2(j)(3)(A)(i).

[6] The generic listing requirements under NYSE Arca Equities Rule 5.2(j)(3) permit the listing and trading of ICUs pursuant to Rule 19b–4(e) under the Act (17 CFR 240.19b–4(e)). Rule 19b–4(e) provides that the listing and trading of a new derivative securities product by a self-regulatory organization (''SRO'') shall not be deemed a proposed rule change, pursuant to Rule 19b–4(c)(1), if the Commission has approved, pursuant to Section 19(b) of the Act, the SRO's trading rules, procedures, and listing standards for the product class that would include the new derivatives securities product, and the SRO has a surveillance program for the product class.

[7] The Exchange represents that, as of December 3, 2007, the most heavily weighted component of the Index represented 32.2% of the Index weight, and the five most heavily weighted component stocks represented 65.2% of the Index weight.

[8] 17 CFR 240.10A–3.

[9] *See* Registration Statement on Form N–1A (Post-Effective Amendment) filed by iShares, Inc. with the Commission on December 28, 2007 (File Nos. 033–97598 and 811–09102) (''Registration Statement'').

Availability of Information Regarding the Shares and the Index

Morgan Stanley Capital International, Inc. (''MSCI'') calculates the Index value for each trading day in the Mexican exchange market, the Bolsa Mexicana de Valores, based on official closing prices in such exchange market and publicly disseminates the Index values for the previous day's close.[10] The Index values are reported periodically in major financial publications and are also available through vendors of financial information. MSCI or another third-party major market data vendor makes available at least every 60 seconds an updated Index value when the Mexican exchange market trading hours overlap with the NYSE Arca Marketplace (as defined in NYSE Arca Equities Rule 1.1(e)) Core Trading Session (9:30 a.m. to 4:15 p.m. Eastern Time or ''ET'').[11] Otherwise, when the Bolsa Mexicana de Valores is closed during NYSE Arca Marketplace trading hours, the Fund provides closing Index values on *http://www.ishares.com.* iShares, Inc. causes to be made available daily the names and required number of shares of each of the securities to be deposited in connection with the issuance of the Shares,[12] as well as information relating to the required cash payment representing, in part, the amount of accrued dividends for the Fund.

In addition, an independent third party calculates and disseminates the Indicative Optimized Portfolio Value or ''IOPV'' on a per-Share basis through the facilities of the Consolidated Tape Association (''CTA'') at least every 15 seconds during the Core Trading Session.[13] The Fund administrator, State Street Bank and Trust Company, calculates the net asset value (''NAV'') for the Fund once a day on each day that the New York Stock Exchange, LLC is open for trading, generally at 4 p.m. ET. The NAV is also available to the public on *http://www.iShares.com,* from the Fund distributor by means of a toll-free phone number, and to participants of the National Securities Clearing Corporation.

There is also disseminated a variety of data with respect to the Fund on a daily basis by means of CTA and Consolidated Quote High Speed Lines, which is made available prior to the opening of the Core Trading Session on the NYSE Arca Marketplace. Specifically, information with respect to recent NAV, number of shares outstanding, and the estimated and total cash amount per Creation Unit[14] aggregation are made available prior to the opening of the Core Trading Session. The Exchange disseminates quotation and last-sale information for the Shares through the facilities of the CTA. In addition, the Web site for the Fund, which is publicly accessible at no charge, contains the following information, on a per-Share basis, for the Fund: (1) The prior business day's NAV and the mid-point of the bid-ask price at the time of calculation of such NAV (''Bid/Ask Price'')[15] and a calculation of the premium or discount of such price against such NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. The Fund's holdings are available on the Fund's Web site, and components of the Index are available to subscribers at *http://www.mscibarra.com.* The information on the Fund's Web site will be available to all market participants at the same time. If the Exchange becomes aware that the NAV is not being disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants.[16]

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the Exchange from 4 a.m. to 8 p.m. ET in accordance with NYSE Arca Equities Rule 7.34. The Exchange represents that it has appropriate rules to facilitate transactions in the Shares during all trading sessions, including rules governing trading halts, as provided in NYSE Arca Equities Rules 5.5(g)(2) and 7.12.

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products, including ICUs, to monitor trading in the Shares.[17] The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules. The Exchange's current trading surveillance focuses on detecting when securities trade outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange states that it may obtain information via the Intermarket Surveillance Group (''ISG'') from other exchanges who are members or affiliate members of ISG. In addition, the Exchange has a general policy prohibiting the distribution of material, non-public information by its employees.

[10] The Exchange notes that, when a broker-dealer or its affiliate, such as MSCI, is involved in the development and maintenance of a stock index upon which a product such as iShares is based, the broker-dealer or its affiliate should have procedures designed specifically to address the improper sharing of information. *See* Securities Exchange Act Release No. 52178 (July 29, 2005), 70 FR 46244, 46246 n.18 (August 9, 2005) (SR–NYSE–2005–41) (describing the procedures which must be in place to prevent the improper sharing of information). The Exchange represents that MSCI has procedures in place that comply with the requirements of Commentary .01(b)(1) to NYSE Arca Equities Rule 5.2(j)(3), which relate to restricted access of information concerning changes and adjustments to the Index.

[11] *See* Commentary .01(b)(2)(b) to NYSE Arca Equities Rule 5.2(j)(3) (providing that index values for ICUs based on international or global equity portfolios will be widely disseminated by one or more major market data vendors at least every 60 seconds during the Core Trading Session). *See also* NYSE Arca Equities Rule 7.34 (describing the hours of trading during three trading sessions on the Exchange: Opening Session; Core Trading Session; and Late Trading Session).

[12] The closing prices of the securities to be deposited are readily available from, as applicable, the relevant exchanges, automated quotation systems, published or other public sources in Mexico, or online information services such as Bloomberg or Reuters. The exchange rate information required to convert such information into U.S. dollars is also readily available in newspapers and other publications and from a variety of on-line services.

[13] The Exchange notes that there is an overlap in trading hours between the Mexican and U.S. markets for the Fund; trading hours on the Bolsa Mexicana de Valores, where the Index stocks are traded, are from 8:30 a.m. to 3 p.m. Central Standard Time. Therefore, the IOPV calculator updates the applicable IOPV at least every 15 seconds to reflect price changes in the Mexican market, and converts such prices into U.S. dollars based on the currency exchange rate. When the Mexican market is closed, but U.S. markets are open from 9:30 a.m. to 4:15 p.m. ET, the IOPV is updated at least every 15 seconds to reflect changes in currency exchange rates after the Mexican market closes.

[14] *See* Registration Statement, *supra* note 9 (defining Creation Unit).

[15] The Bid-Ask Price of the Fund is determined using the highest bid and lowest offer on the NYSE Arca Marketplace as of the time of calculation of the Fund's NAV.

[16] E-mail from Michael Cavalier, Assistant General Counsel, NYSE Euronext, to Edward Cho and Christopher Chow, Special Counsels, Division of Trading and Markets, Commission, dated February 12, 2008.

[17] Telephone conversation between Michael Cavalier, Assistant General Counsel, NYSE Euronext, and Christopher Chow, Special Counsel, Division of Trading and Markets, Commission, dated February 12, 2008.

Information Bulletin

The Exchange will inform its ETP Holders [18] in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in required unit aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) how information regarding the IOPV is disseminated; (4) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Index value and IOPV will not be calculated or publicly available; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement for the Fund and discuss any exemptive, no-action, or interpretive relief granted by the Commission from the provisions of the Act and the rules thereunder. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4 p.m. ET each trading day.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[19] in general, and furthers the objectives of Section 6(b)(5) of the Act,[20] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange states that written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [21] and Rule 19b–4(f)(6) thereunder.[22]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that the Exchange can continue to list and trade the Shares without interruption. The Exchange states that it has developed adequate trading rules, procedures, surveillance programs, and listing standards for the continued listing and trading of the Shares.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[23] Given that the Shares, which are currently listed and trading on the Exchange, comply with all of NYSE Arca's initial generic listing standards for ICUs (except for narrowly missing two requirements of Commentary .01(a)(B)(3) to NYSE Arca Equities Rule 5.2(j)(3)), the continued listing and trading of the Shares by NYSE Arca does not appear to present any novel or significant regulatory issues or impose any significant burden on competition. For these reasons, the Commission designates the proposed rule change as operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2008–15 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2008–15. 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

[18] *See* NYSE Arca Equities Rule 1.1 (defining ETP Holder as a registered broker or dealer that is a sole proprietorship, partnership, corporation, limited liability company, or other organization in good standing that has been issued an Equity Trading Permit or ''ETP'').

[19] 15 U.S.C. 78f(b).

[20] 15 U.S.C. 78f(b)(5).

[21] 15 U.S.C. 78s(b)(3)(A).

[22] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

[23] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2008–15 and should be submitted on or before March 12, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–3081 Filed 2–19–08; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–57313; File No. SR–Phlx–2008–10]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Payment for Order Flow and Linkage P/A Orders

February 12, 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 January 31, 2008, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. Phlx has designated this proposal as one establishing or changing a due, fee, or other charge imposed by Phlx under section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend the Exchange's payment for order flow program to eliminate the payment for order flow fee on transactions executed on the Exchange that correspond with an outbound Linkage Principal Acting as Agent (''P/A'') order.

This proposal is scheduled to become effective for transactions settling on or after February 1, 2008. Also, the Exchange notes that consistent with its current payment for order flow program, this proposal would remain in effect as a pilot program that is scheduled to expire on the same date as the one-year pilot program in effect in connection with the provisions of Exchange Rule 1080(l) relating to Directed Orders.[5] The current pilot program is scheduled to expire on May 27, 2008.

The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.phlx.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, the following payment for order flow fees are in effect at the Exchange:[6] (1) Equity options (other than those equity options that trade as part of the Exchange's Penny Pilot Program)[7] and options on the Russell 2000® Index[8] traded under the symbol RUT, and options on the one-tenth value Russell 2000® Index traded under the symbol RMN, are all assessed $0.70 per contract; and (2) equity options that trade as part of the Exchange's Penny Pilot Program are assessed $0.25 per contract. Trades resulting from either Directed or non-Directed Orders that are delivered electronically and executed on the Exchange are assessed a payment for order flow fee,[9] while non-electronically-delivered orders (*i.e.*, represented by a floor broker) are not assessed a payment for order flow fee.[10]

Presently, a payment for order flow fee is charged in connection with Linkage P/A orders. For example, if there is an order resting on the Exchange's options limit order book, which is part of the Exchange's trading system, Phlx XL, and a better price is posted at an away market or the requisite volume is available at an away market, that order will be sent through Linkage as a P/A order. When the specialist receives confirmation that the order has been executed, that specialist then completes the transaction by filling the order of the requesting customer. When such order is filled in this way, the specialist must pay a payment for order flow fee.[11]

[24] 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)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] *See* Securities Exchange Act Release No. 55803 (May 23, 2007), 72 FR 30413 (May 31, 2007) (SR–Phlx–2007–37).

[6] *See* Securities Exchange Act Release Nos. 53841 (May 19, 2006), 71 FR 30461 (May 26, 2006) (SR–Phlx–2006–33); 54297 (August 9, 2006), 71 FR 47280 (August 16, 2006) (SR–Phlx–2006–47); 54485 (September 22, 2006), 71 FR 57017 (September 28, 2006) (SR–Phlx–2006–56); 55290 (February 13, 2007), 72 FR 8051 (February 22, 2007) (SR–Phlx–2007–05); 55473 (March 14, 2007), 72 FR 13338 (March 21, 2007) (SR–Phlx–2007–12); and 55891 (June 11, 2007), 72 FR 33271 (June 15, 2007) (SR–Phlx–2007–39).

[7] The current Penny Pilot Program, in effect through March 27, 2009, permits certain options series to be quoted and traded in increments of $0.01. *See* Securities Exchange Act Release No. 56563 (September 27, 2007), 72 FR 56429 (October 3, 2007) (SR–Phlx–2007–62).

[8] The Exchange states that Russell 2000® is a trademark and service mark of the Frank Russell Company, used under license. Neither Frank Russell Company's publication of the Russell Indexes nor its licensing of its trademarks for use in connection with securities or other financial products derived from a Russell Index in any way suggests or implies a representation or opinion by Frank Russell Company as to the attractiveness of investment in any securities or other financial products based upon or derived from any Russell Index. Frank Russell Company is not the issuer of any such securities or other financial products and makes no express or implied warranties of merchantability or fitness for any particular purpose with respect to any Russell Index or any data included or reflected therein, nor as to results to be obtained by any person or any entity from the use of the Russell Index or any data included or reflected therein.

[9] Specialists and Directed ROTs who participate in the Exchange's payment for order flow program are assessed a payment for order flow fee, in addition to ROTs. Therefore, the payment for order flow fee is assessed, in effect, on equity option transactions between a customer and an ROT, a customer and a Directed ROT, or a customer and a specialist.

[10] Electronically-delivered orders do not include orders delivered through the Floor Broker Management System pursuant to Exchange Rule 1063.

[11] For example, if an order is sent to the Exchange and an away market is displaying a better price, that order would be sent to the away market for execution. Specifically, that order would be sent through Linkage as a P/A order. Under the Exchange's current payment for order flow program, no payment for order flow fee would be assessed on this transaction. However, after confirmation is received that the order has been executed, the order of the requesting customer would be filled. Currently, the Exchange states that it would assess the specialist a payment for order flow fee when the customer order is filled; however, this proposal seeks to eliminate the payment for order flow fee

The Exchange states that the purpose of this proposal is to eliminate an undue financial burden that is placed on the specialists as a result of these transactions.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act [12] in general, and furthers the objectives of section 6(b)(4) of the Act [13] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The Exchange believes, at this time, that the specialists should not pay a payment for order flow fee on these transactions as they are merely facilitating this order and they receive little benefit from this order.

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 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 proposed rule change has been designated as a fee change pursuant to section 19(b)(3)(A)(ii) of the Act [14] and Rule 19b–4(f)(2) [15] thereunder, because it establishes or changes a due, fee, or other charge imposed by the Exchange. Accordingly, the proposal will take effect upon filing with the Commission. 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.

for such transaction. *See* E-mail from Cynthia K. Hoekstra, Vice President, Exchange, to Michou Nguyen, Special Counsel, Division of Trading and Markets, Commission, on February 7, 2008.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4).

[14] 15 U.S.C. 78s(b)(3)(A)(ii).

[15] 17 CFR 240.19b–4(f)(2).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2008–10 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2008–10. 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 Number SR–Phlx–2008–10 and should be submitted on or before March 12, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8–3037 Filed 2–19–08; 8:45 am]

BILLING CODE 8011–01–P

SELECTIVE SERVICE SYSTEM

Form Submitted to the Office of Management and Budget for Extension of Clearance

AGENCY: Selective Service System.

ACTION: Notice.

The following form has been submitted to the Office of Management and Budget (OMB) for extension of clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35):

SSS FORM—404

Title: Potential Board Member Information.

Need and/or Use: Is used to identify individuals willing to serve as members of local, appeal or review boards in the Selective Service System.

Respondents: Potential board members.

Burden: A burden of 15 minutes or less on the individual respondent.

Copies of the above identified form can be obtained upon written request to the Selective Service System, Reports Clearance Officer, 1515 Wilson Boulevard, Arlington, Virginia 22209–2425.

Written comments and recommendations for the proposed extension of clearance of the form should be sent within 30 days of the publication of this notice to the Selective Service System, Reports Clearance Officer, 1515 Wilson Boulevard, Arlington, Virginia 22209–2425.

A copy of the comments should be sent to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Selective Service System, Office of Management and Budget, New Executive Office Building, Room 3235, Washington, DC 20503.

Dated: February 4, 2008.

Ernest E. Garcia,

Deputy Director.

[FR Doc. 08–762 Filed 2–19–08; 8:45 am]

BILLING CODE 8015–01–M

[16] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 11169 and # 11170]

Arkansas Disaster Number AR–00015

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of ARKANSAS (FEMA—1744—DR), dated 02/08/2008.

Incident: Severe Storms, Tornadoes, and Flooding.

Incident Period: 02/05/2008 and continuing.

EFFECTIVE DATE: 02/11/2008.

Physical Loan Application Deadline Date: 04/08/2008.

EIDL Loan Application Deadline Date: 11/10/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Arkansas dated 02/08/2008 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: Conway, Izard, Randolph.

Contiguous Counties:

Arkansas: Clay, Greene, Perry.

Missouri: Ripley.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E8–3089 Filed 2–19–08; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 6102]

In the Matter of the Amended Designations of Salafist Group for Call and Combat a.k.a. GSPC a.k.a. Le Groupe Salafiste Pour La Predication Et Le Combat a.k.a. Salafist Group for Preaching and Combat, as a Foreign Terrorist Organization Pursuant to Section 219 of the Immigration and Nationality Act and Pursuant to Section 1(b) of Executive Order 13224

Based upon a review of the administrative record assembled in this matter, and in consultation with the Attorney General and the Secretary of the Treasury, I have concluded that there is a sufficient factual basis to find that the Salafist Group for Call and Combat, has changed its name to al-Qa'ida in the Islamic Maghreb, a.k.a. AQIM, a.k.a. Tanzim al-Qa'ida fi Bilad al-Maghrib al-Islamiya, and that the relevant circumstances described in Section 219(a)(1) of the Immigration and Nationality Act, as amended (the ''INA'') (8 U.S.C. 1189(a)(1)), and in Section 1(b) of Executive Order 13224, as amended (''E.O. 13224''), still exist with respect to that organization.

Therefore, I hereby further amend the designation of that organization as a foreign terrorist organization, pursuant to Section 219(b) of the INA (8 U.S.C. 1189(b)), and further amend the 2001 designation of that organization pursuant to Section 1(b) of E.O. 13224, to include the following new names:

al-Qa'ida in the Islamic Maghreb

a.k.a. AQIM

a.k.a Tanzim al-Qa'ida fi Bilad al-Maghrib al-Islamiya

Consistent with the determination in section 10 of Executive Order 13224 that ''prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously'', I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

Dated: February 4, 2008.

Condoleezza Rice,

Secretary of State, Department of State.

[FR Doc. E8–3154 Filed 2–19–08; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Public Notice 6103]

Bureau of Educational and Cultural Affairs; Notice: Amendment to Original RFGP (Community College Initiative for Egypt)

SUMMARY: The United States Department of State, Bureau of Educational and Cultural Affairs, announces revisions to the original RFGP announced in the **Federal Register** on Thursday, January 31, 2008 (FR Volume 73, Number 21):

Section III.1. ''Eligible applicants'' is revised as follows: Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) that are consortia of accredited U.S. community colleges, or other combinations of multiple community college campuses. Consortia must designate a lead institution to receive and administer the award.

The due date for this competition is revised from April 7, 2008 to April 21, 2008.

All other terms and conditions remain the same.

ADDITIONAL INFORMATION: Interested organizations should contact Karene Grad, Office of Global Educational Programs, ECA/A/S/U, Room 349, ECA/A/S/U–08–03, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, telephone 202–453–8643, fax 202–453–8891, e-mail *GradKX@state.gov*, prior to Monday, April 21, 2008.

Dated: February 13, 2008.

C. Miller Crouch,

Acting Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. E8–3156 Filed 2–19–08; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property at the Brigham City Municipal Airport, Brigham City, Utah

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of request to release airport property.

SUMMARY: The FAA proposes to rule and invite public comment on the release of land at the Brigham City Municipal Airport under the provisions of Section

125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21).

DATES: Comments must be received on or before March 10, 2008.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Mr. Craig A. Sparks, Manager, Federal Aviation Administration, Northwest Mountain Region, Airports Division, Denver Airports District Office, 26805 E. 68th Ave., Suite 224, Denver, Colorado 80249.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Blake Fonnesbeck, Director of Public Works, Brigham City Municipal Airport, P.O. Box 1005, 20 North Main Street, Brigham City, Utah 84302.

FOR FURTHER INFORMATION CONTACT: Mr. Roman Piñon, Project Manager, Federal Aviation Administration, Northwest Mountain Region, Airports Division, Denver Airports District Office, 26805 E. 68th Ave., Suite 224, Denver, Colorado 80249.

The request to release property may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release property at the Brigham City Municipal Airport under the provisions of the AIR 21.

On September 14, 2007, the FAA determined that the request to release property at the Brigham City Municipal Airport submitted by Brigham City, Utah met the procedural requirements of the Federal Aviation Regulations, Part 155. The FAA may approve the request, in whole or in part, no later than March 10, 2008.

The following is a brief overview of the request:

The Brigham City Municipal Airport requests the release of 1.26 acres of non-aeronautical airport property to Brigham City, Utah. The purpose of this release is to allow the City to exchange the subject land that no longer serves any aeronautical purpose at the airport. The exchange will provide new access to the airport.

Any person may inspect the request by appointment at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may inspect the application, notice and other documents germane to the application in person at the Brigham City Municipal Airport, 20 North Main Street, Brigham City, Utah 84302.

Issued in Denver, Colorado on February 4, 2008.

Craig A. Sparks,

Manager, Denver Airports District Office.

[FR Doc. 08–720 Filed 2–19–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 147 Sixty Seventh Plenary: Minimum Operational Performance Standards for Traffic Alert and Collision Avoidance Systems Airborne Equipment

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 147 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 147: Minimum Operational Performance Standards for Traffic Alert and Collision Avoidance Systems Airborne Equipment.

DATES: The meeting will be held March 13, 2008 from 9 a.m.–5 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc. 1828 L Street, Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 147 Meeting and Working Group 75. The agenda will include:

- March 13:
  - Opening Plenary Session: (Welcome and Introductory Remarks, Review/Approval of minutes from 66th SC–147 meeting, Review Agenda).
  - FAA TCAS II Program Office Activities:
  - EUROCONTROL TCAS II Program Office Activities.
  - Requirements Working Group (RWG) Activities.
  - Review and resolution of comments/issues from FRAC.
  - Consideration of Final Draft of TCAS MOPS–DO–185B.
  - Other WG75 Activities.
  - Future Plans for WG–75.
  - Future Plans for SC–147.
  - Closing Session (Other Business, Future Actions/Activities, Date and Place of Next Meeting, Adjourn).

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on February 11, 2008.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. 08–732 Filed 2–19–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice for Meadows Field Airport, Bakersfield, California

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by County of Kern, California for Meadows Field Airport under the provisions of 49 U.S.C. 47501 et seq. (Aviation Safety and Noise Abatement Act) and 14 CFR Part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps is January 16, 2008.

FOR FURTHER INFORMATION CONTACT: Victor Globa, Federal Aviation Administration, Los Angeles Airports District Office, P.O. Box 92007, Los Angeles, California 90009–2007, Telephone: 310/725–3637.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Meadows Field Airport are in compliance with applicable requirements of Part 150, effective January 16, 2008. Under 49 U.S.C. 47503 of the Aviation Safety and Noise Abatement Act (hereinafter referred to as ''the Act''), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed

in consultation with interested and affected parties in the local community, government agencies, and persons using the airport. An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The FAA has completed its review of the noise exposure maps and accompanying documentation submitted by County of Kern, California. The documentation that constitutes the ''Noise Exposure Maps'' as defined in section 150.7 of Part 150 includes: Exhibit 1 ''Existing Conditions (2005) Noise Exposure Map,'' and Exhibit 2 ''Five-Year Forecast (2010) Noise Exposure Map.'' The Noise Exposure Maps contain current and forecast information including the depiction of the airport and its boundaries, the runway configurations, land uses such as residential, open space, commercial/office, community facilities, libraries, churches, infrastructure, vacant and warehouse and those areas within the Community Noise Equivalent Level (CNEL) 60, 65, 70 and 75 noise contours. Estimates for the number of people within these contours for the year 2005 are shown in Table 4B. Estimates of the future residential population within the 2007 noise contours are shown in Table 4D. Flight tracks for the existing and the five-year forecast Noise Exposure Maps are found in Exhibits 3D, 3E, 3F and 3G. The type and frequency of aircraft operations (including nighttime operations) are found in Tables 3B and 3C. The FAA has determined that these noise exposure maps and accompanying documentation are in compliance with applicable requirements. This determination is effective on January 16, 2008.

FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program. If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 47503 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 47506 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 47503 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the full noise exposure map documentation and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, Planning and Environmental Division, APP–400, 800 Independence Avenue, SW., Washington, DC 20591.

Federal Aviation Administration, Western-Pacific Region, Airports Division, Room 3012, 15000 Aviation Boulevard, Lawndale, California 90261.

Federal Aviation Administration, Los Angeles Airports District Office, 15000 Aviation Boulevard, Lawndale, California 90261.

Jack Gotcher, CM, CAE, Director, County of Kern, Department of Airports, Meadows Field Airport, 3701 Wings Way, Suite 300, Bakersfield, California 93308.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Hawthorne, California on January 16, 2008.

Mark A. McClardy,

Manager, Airports Division, AWP–600, Western-Pacific Region.

[FR Doc. 08–721 Filed 2–19–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Westmoreland County, PA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Cancellation of the Notice of Intent.

SUMMARY: This notice rescinds the previous Notice of Intent (issued January 29, 1993) to prepare an Environmental Impact Statement for a proposed highway project consisting of the construction of a new two-lane roadway (to be identified as T.R. 711) between the southern terminus of U.S. Route 30 and the northern terminus, which is a point approximately one mile north of Ligonier on S.R. 711 in Ligonier Township. The proposed project is approximately 2.0 miles in length.

FOR FURTHER INFORMATION CONTACT: David W. Cough, P.E., Director of Operations, Federal Highway Administration, Pennsylvania Division Office, 228 Walnut Street, Room 508, Harrisburg, PA 17101–1720, Telephone (717) 221–3411—OR—Alan Bailey, P.E., Assistant District Executive, Pennsylvania Department of Transportation, District 12–0, P.O. Box 459 North Gallatin Avenue Extension, Uniontown, PA 15401, Telephone (724) 439–7259.

SUPPLEMENTARY INFORMATION: The need to address traffic conflicts within the Ligonier central business district still exists and the Pennsylvania Department of Transportation, District 12–0, intends to continue to address traffic compatibility with the community through a series of transportation system management implementation strategies. These strategies include, but are not limited to, advanced warning signs, speed limit enforcement, and pavement markings. Furthermore, PennDOT District 12–0 has already completed a signing and pavement marking project in the Ligonier Diamond area to improve pedestrian safety and facilitate truck and automobile traffic movements. PennDOT will also recommend a Pedestrian Safety Program and will provide information to the borough on how to apply for a Safer Routes to School project.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Dated: February 8, 2008.

David C. Lawton,

Acting Division Administrator, Harrisburg, PA.

[FR Doc. 08–716 Filed 2–19–08; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2008 0011]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel *SOUTHERN BELLE*.

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2008–0011 at *http://www.regulations.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before March 21, 2008.

ADDRESSES: Comments should refer to docket number MARAD–2008–0011. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at: *http://www.regulations.gov*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel *SOUTHERN BELLE* is:

Intended Use: ''The vessel will be used solely to take Club Members as passengers for hire on voyages of single day, 3–4 day and 7-day durations.''

Geographic Region: ''Florida, Virginia, Maryland, Delaware, Connecticut, Rhode Island and Massachusetts.''

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Dated: February 5, 2008.

By order of the Maritime Administrator.

Christine Gurland,

Acting Secretary, Maritime Administration.

[FR Doc. E8–3053 Filed 2–19–08; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2008 0008]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel *Silent Faith*.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2008 0008 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before March 21, 2008.

ADDRESSES: Comments should refer to docket number MARAD–2008–0008. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel *SILENT FAITH* is:

Intended Use: ''Day charters, tours, sunset cruise, weddings, porpoise

watching, snorkeling. (We are buying an existing business called The Restless Native, minus the boat).''

Geographic Region: ''Stuart, Florida to Key West, Florida, or Southeast Florida''.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–19478).

Dated: February 5, 2008.

By order of the Maritime Administrator.

Christine Gurland,

Acting Secretary, Maritime Administration.

[FR Doc. E8–3054 Filed 2–19–08; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2008 0010]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel *UNCLE DUCKY II.*

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2008 0010 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before March 21, 2008.

ADDRESSES: Comments should refer to docket number MARAD–2008–0010. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel *UNCLE DUCKY II* is:

Intended Use: ''Charter fishing.''

Geographic Region: ''Lake Superior''.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Dated: February 5, 2008.

By order of the Maritime Administrator.

Christine Gurland,

Acting Secretary, Maritime Administration.

[FR Doc. E8–3061 Filed 2–19–08; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2008 0009]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel WANDERER.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2008 0009 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before March 21, 2008.

ADDRESSES: Comments should refer to docket number MARAD–2008–0009. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents

entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel WANDERER is:

Intended Use: ''Recreational charter with owner-provided U.S. captain.''

Geographic Region: ''U.S. East Coast, specifically: Maine, Massachusetts, New Hampshire, Rhode Island, New York, Connecticut, New Jersey, Pennsylvania, Maryland, Delaware, Virginia, North Carolina, South Carolina, Georgia, Florida, U.S. Virgin Islands, Puerto Rico.''

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Dated: February 5, 2008.

By order of the Maritime Administrator.

Christine Gurland,

Acting Secretary, Maritime Administration.

[FR Doc. E8–3062 Filed 2–19–08; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Advisory Committee on Environmental Hazards; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Veterans' Advisory Committee on Environmental Hazards will be held on March 31–April 1, 2008, from 8 a.m. to 4:30 p.m. each day. The meeting will be held in Room 530 at 810 Vermont Avenue NW., Washington, DC. The meeting is open to the public.

The purpose of the Committee is to provide advice to the Secretary of Veterans Affairs on adverse health effects that may be associated with exposure to ionizing radiation, and to make recommendations on proposed standards and guidelines regarding VA benefit claims based upon exposure to ionizing radiation.

The major items on the agenda for both days will be discussions of medical and scientific papers concerning the health effects of exposure to ionizing radiation. On the basis of the discussions, the Committee may make recommendations to the Secretary concerning the relationship of certain diseases to exposure to ionizing radiation. On March 31, there will be a presentation by a representative from the Department of Defense's Nuclear Test Personnel Review Program. The April 1 session will include planning for future Committee activities and assignment of tasks among the members.

An open forum for oral statements from the public will be available for 30 minutes in the afternoon each day. People wishing to make oral statements before the Committee will be accommodated on a first-come, first-served basis and will be provided three minutes per statement.

Members of the public wishing to attend should contact Ms. Bernice Green at the Department of Veterans Affairs, Compensation and Pension Service, 810 Vermont Avenue, NW., Washington, DC 20420, by phone at (202) 461–9723, or by fax at (202) 275–1728. Individuals should submit written questions or prepared statements for the Committee's review to Ms. Green at least five days prior to the meeting. Those who submit material may be asked for clarification prior to its consideration by the Committee.

Dated: February 11, 2008.

By Direction of the Secretary:

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 08–769 Filed 2–19–08; 8:45 am]

BILLING CODE 8320–01–M

Federal Register

Wednesday,
February 20, 2008

Part II

Department of the Interior

Fish and Wildlife Service
50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Petition Finding and Proposed Rule To Remove the Brown Pelican (Pelecanus occidentalis) From the Federal List of Endangered and Threatened Wildlife; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R2–ES–2008–0025; 92220–1113–0000–C6]

RIN 1018–AV28

Endangered and Threatened Wildlife and Plants; 12-Month Petition Finding and Proposed Rule To Remove the Brown Pelican (Pelecanus occidentalis) From the Federal List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule and notice of petition finding.

SUMMARY: Under the authority of the Endangered Species Act of 1973, as amended (Act), we, the U.S. Fish and Wildlife Service (Service), propose to remove the brown pelican (*Pelecanus occidentalis*) from the Federal List of Endangered and Threatened Wildlife (List) due to recovery. This action is based on a review of the best available scientific and commercial data, which indicates that the species is no longer in danger of extinction, or likely to become so within the foreseeable future. If this proposal is finalized, the brown pelican will remain protected under the provisions of the Migratory Bird Treaty Act. This document also constitutes our 12-month finding on a petition to delist the brown pelican subspecies that occurs along the Pacific Coast of California and Mexico, including the Gulf of California, and a petition to delist the Louisiana population of the brown pelican.

DATES: We will accept comments received or postmarked on or before April 21, 2008. We must receive requests for public hearings, in writing, at the address shown in the **ADDRESSES** section by April 7, 2008.

ADDRESSES: You may submit written comments and materials to us by any 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:* RIN 1018–AV28; 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 comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Adam Zerrenner, Field Supervisor, U.S. Fish and Wildlife Service, Austin Ecological Services Office, 10711 Burnet Road, Suite 200, Austin, TX 78758; telephone 512/490–0057, extension 248; fascimilie 512/490–0974.

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We intend for any final action resulting from this proposal to be as accurate as possible. Therefore, we solicit data, comments, or suggestions from the public, other concerned government agencies, the scientific community, industry, Tribes, or any other interested party concerning this proposed rule. We particularly seek comments and information concerning: (1) Information about any threat (or lack thereof) to the brown pelican; (2) additional information concerning the range, distribution, location of any additional populations, and population size of this species; (3) information on habitat destruction and/or preservation in relation to brown pelicans; (4) impacts to the species from commercial fisheries outside of the U.S.; (5) current or planned activities in the species' habitat and the possible impacts to this species; (6) data on population trends; (7) data on the status of brown pelicans in the West Indies; (8) data suggesting that any of the subspecies of brown pelican require protection; and (9) information pertaining to the requirement for post delisting monitoring. In addition, because we have received information indicating that one of the subspecies of brown pelican discussed in this proposal, *Pelecanus occidentalis thagus*, may be considered a full species, we request any additional information regarding brown pelican taxonomy. Please note that as we make our determination, we will note but not consider comments merely stating support or opposition to the actions under our consideration without providing supporting information because section 4(b)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*) directs that we make determinations as to whether any species is a threatened or endangered species ''solely on the basis of the best scientific and commercial data available.''

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. Comments must be submitted to *http://www.regulations.gov* before midnight (Eastern Standard Time) on the date specified in the **DATES** section. We will not accept comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section. We will not accept anonymous comments; your comment must include your first and last name, city, State, country, and postal (zip) code. Finally, we will not consider hand-delivered comments that we do not receive, or mailed comments that are not postmarked, by the date specified in the **DATES** section.

We will post your entire comment—including your personal identifying information—on *http://www.regulations.gov.* If you provide personal identifying information in addition to the required items specified in the previous paragraph, such as your street address, phone number, or e-mail address, 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.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, 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, Austin Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

The Act provides for a public hearing on this proposed delisting, if requested. Requests must be received within 45 days of the date of publication of this proposal. Such requests must be made in writing and addressed to Adam Zerrenner, Field Supervisor, U.S. Fish and Wildlife Service, Austin Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

Currently listed brown pelican populations occur in primarily coastal marine and estuarine (where fresh and salt water intermingle) environments along the coast of the Gulf of Mexico from Mississippi to Texas; along the Pacific Coast from British Columbia, Canada, south through Mexico into Central and South America; and in the West Indies, but are occasionally sighted throughout the U.S. (Shields 2002, pp. 2–4). Brown pelicans remain in residence throughout the breeding range, but some segments of many populations migrate annually after breeding (Shields 2002, p. 6). Overall, the brown pelican still occurs throughout its historical range (Shields 2002, pp. 4–5). This proposed rule includes relevant biological and life history information for the brown pelican. However, additional information about the brown pelican's

biology and life history can be found in the Birds of North America, No. 609 (Shields 2002, pp. 1–36).

The species *Pelecanus occidentalis* is generally recognized as consisting of six subspecies: (1) *P. o. occidentalis* (Linnaeus, 1766: West Indies and the Caribbean Coast of South America, occasionally wanders to coasts of Mexico and Florida), (2) *P. o. carolinensis* (Gmelin, 1798: Atlantic and Gulf coasts of the United States and Mexico; Caribbean Coast of Mexico south to Venezuela, South America; Pacific Coast from southern Mexico to northern Peru, South America), (3) *P. o. californicus* (Ridgeway, 1884: California south to Colima, Mexico, including Gulf of California), (4) *P. o. urinator* (Wetmore, 1945: Galapagos Islands), (5) *P. o. murphyi* (Wetmore, 1945: Ecuador and Pacific Coast of Colombia), and (6) *P. o. thagus* (Molina, 1782: Peru and Chile). Recognition of brown pelican subspecies is based largely on relative size and color of plumage and soft parts (for example, the bill, legs, and feet). The distributional limits of the brown pelican subspecies are poorly known, so the geographic descriptions of their ranges are approximate and may not be adequate to assign subspecies designations. Taxonomy of the brown pelican subspecies has not been critically reviewed for many years, and the classification followed by the American Ornithological Union (AOU 1957, pp. 29–30) and by Palmer (1962, pp. 274–276) is based on Wetmore's (1945, pp. 577–586) review, which was based on few specimens from a limited portion of the range. This proposed delisting rule applies to the entire listed species, which includes all brown pelican (*Pelecanus occidentalis*) subspecies.

For a review of the brown pelican's status, see the ''Population Estimates'' section below. For a review of the threats in relation to the species status, see the ''Summary of Factors Affecting the Species'' section below.

Previous Federal Action

Due to population declines of brown pelicans, in 1970, we listed the species as endangered under the Endangered Species Conservation Act of 1969 (Pub. L. 91–135, 83 Stat. 275). Brown pelicans were included in the List of Threatened and Endangered Foreign Species on June 2, 1970 (35 FR 8495), and included in the United States list of endangered and threatened species on October 13, 1970 (35 FR 16047). The species was subsequently listed under the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*).

On February 4, 1985, the Service delisted the brown pelican in Alabama, Florida, Georgia, South Carolina, North Carolina, and points northward along the Atlantic Coast (50 FR 4938). However, the brown pelican continued to be listed as endangered throughout the remainder of its range, including Mississippi, Louisiana, Texas, California, Mexico, Central and South America, and the West Indies.

On July 5, 1994, we received a petition dated February 21, 1994, from Joe L. Herring, Secretary, Department of Wildlife and Fisheries, State of Louisiana, requesting the Service remove the brown pelican from the List in Louisiana. The petition contained information on successful pelican reintroductions, colony expansions, population numbers, and productivity in Louisiana. We were not able to act on the request, since the processing of delisting actions was assigned the lowest priority in the allocation of available funding appropriations, as described in the **Federal Register** (61 FR 64475; December 5, 1996). In 1999, delisting actions were moved from the Service's listing program to the recovery program, allowing us to address requests and petitions to downlist and delist species. This proposed rule constitutes our 90-day and 12-month findings for the Louisiana petition to delist the brown pelican.

On December 14, 2005, we received a petition from Craig Harrison, of the law firm Hutton and Williams, representing the Endangered Species Recovery Council, to remove the California brown pelican, the subspecies of brown pelican occurring along the Pacific Coast of California and Mexico, including the Gulf of California, from the List. We note that the taxon on the List is *Pelecanus occidentalis*, and the petition is specifically for the delisting of the California brown pelican subspecies, *Pelecanus occidentalis californicus*. The petition contained information on population size, trends, reproduction, and distribution of the California brown pelican, including information on the status and management of the species in Mexico. It contained information on the elimination (e.g., banning of DDT) or management of threats that originally resulted in the brown pelican being listed as endangered. On May 24, 2006 (71 FR 29908), we published a notice announcing our 90-day finding for the petition, in which we concluded that the petition presented substantial scientific or commercial information indicating that the petitioned action may be warranted. We then initiated a 12-month status review of the California brown pelican to determine if delisting under the Act is warranted. This proposed rule constitutes our 12-month finding for the petition to delist the California brown pelican.

On May 24, 2006, we also published a notice announcing initiation of a 5-year review on the rangewide status of the brown pelican (71 FR 29908). Under the Act, we are required to review listed species at least once every 5 years and determine whether or not any species should be removed from the List, or reclassified from endangered to threatened or from threatened to endangered. The conclusion of this review, which was based on the best available scientific information, indicates the currently listed brown pelican population does not meet the definition of an endangered or threatened species under the Act (Service 2007a, p. 46).

Distribution and Population Estimates

Information on population estimates below is arranged geographically for convenience and to present a logical organization of the information. These broad geographic areas do not necessarily represent populations or other biologically based groupings. The six subspecies described above are not used to organize the following information because distributional limits of the subspecies are poorly known, especially in Central and South America, and because the broad overlap in wintering and breeding ranges among the subspecies introduces considerable uncertainty in assigning subspecies designations in portions of the species range (Shields 2002, p.5). Because the brown pelican is a wide-ranging, mobile species, is migratory throughout much of its range, and may shift its breeding or wintering areas or distribution in response to local conditions, it is difficult to define local populations of the species. Much of the population estimate information below is given at the scale of individual countries, which may not correspond with actual biological populations, particularly for smaller countries that may represent only a fraction of the species' range. Direct comparison of all the estimates provided below is difficult because methods used to derive population estimates are not always reported, some population estimates are given as broad ranges, and some do not specify whether the estimates are for breeding birds or include non-breeding birds as well. However, the information does indicate the broad distribution of the species and reflects the large global population estimate of over 620,000 birds, which does not include birds along the Atlantic coast of the U.S.,

Florida or Alabama (Service 2007a, pp. 44–45).

Gulf of Mexico Coast

Mississippi—Brown pelicans are currently not known to breed in Mississippi, but the Great Backyard Bird Count (GBBC) has documented brown pelicans annually in Mississippi since 1999 (GBBC 2007, pp. 1–9). In 2003 and 2004, 244 and 261 pelicans, respectively, were counted. There was an increase to 403 pelicans in 2005, but a large decrease to 54 in 2006 (GBBC 2007, pp. 5–8), which coincides with Hurricane Katrina. However, in 2007, 334 brown pelicans were documented (GBBC 2007, p. 9).

Louisiana—Before 1920, brown pelicans were estimated to have numbered between 50,000 and 85,000 in Louisiana (King *et al.* 1977a, pp. 417, 419). By 1963, the brown pelican had completely disappeared from Louisiana (Williams and Martin 1968, p. 130). A reintroduction program was conducted between 1968 and 1980. During this period, 1,276 nestling brown pelicans were transplanted from colonies in Florida to coastal Louisiana (McNease *et al.* 1984, p. 169). After the initiation of the reintroduction, the population reached a total number of 16,405 successful nests and 34,641 young produced in 2001 (Holm *et al.* 2003, p. 432). In 2003 the number of nesting colonies increased, but numbers of successful nests decreased to 13,044 due to four severe storms that eroded portions of some nest islands and destroyed some late nests in various colonies (Hess and Linscombe 2003, Table 2). According to surveys conducted by the Louisiana Department of Wildlife and Fisheries (LDWF), the population appeared to recover from these impacts and a peak of 16,501 successful nests producing 39,021 fledglings was recorded in 2004 (LDWF 2006, p. 1; Hess and Linscombe 2006, p. 13). However, tropical storms in 2004 resulted in the loss of three nesting islands east of the Mississippi River and, after storm events in late 2005, LDWF surveys detected 25,289 fledglings (Hess and Linscombe 2006, p. 13). Surveys in 2006 detected 8,036 successful nests in 15 colonies, producing 17,566 fledglings with an average of 2.1 fledglings per successful nest (Hess and Linscombe 2007, p. 1, 4). Hess and Linscombe (2007, p. 4) concluded that the brown pelican population in Louisiana is maintaining sustained growth despite lower fledgling production in 2005 and 2006. Numbers of successful nests are not directly comparable to numbers of individuals in historic estimates because they do not account for immature or non-breeding individuals or provide an index of population size in years when breeding success is low due to factors such as weather and food availability. However, numbers of successful nests and fledglings produced annually since 1993 (Hess and Linscombe 2007, p. 4) do indicate continued nesting and successful fledging of young sufficient to sustain a viable population in Louisiana. See ''Storm effects, weather and erosion impacts to habitat'' under Factor A for further discussion of effects of storms.

Texas—Brown pelicans historically numbered around 5,000 in Texas but began to decline in the 1920s and 1930s, presumably due to shooting and destruction of nests (King *et al.* 1977a, p. 419). According to King *et al.* (1977a, p. 422), there were no reports of brown pelicans nesting in Texas in 1964 or 1966. There were two known nesting attempts in 1965, but the success of these nests is not known. Annual aerial and ground surveys of traditional nesting colonies conducted in Texas during the period 1967 to 1974 indicated that only two to seven pairs attempted to breed in each of these years. Only 40 young were documented fledging during this entire 8-year period (King *et al.* 1977a, p. 422).

The Texas Colonial Waterbird Census has tracked population trends in Texas for the brown pelican since 1973 (Service 2006, p. 5). Although the Texas population of brown pelicans did not experience the total reproductive failure recorded in Louisiana, the first year (1973) of information from the Texas census identified only one nesting colony with six breeding pairs in the State. Since that time, there was a gradual increase through 1993 when there were 530 breeding pairs in two nesting colonies; in 1994, there was a substantial increase to 1,751 breeding pairs in three nesting colonies (Service 2006, pp. 3–5). Since then, the overall increasing trend has continued with some year-to-year variation (Service 2006, p. 2–3). The highest count was in 2005 with 4,097 breeding pairs in 12 colonies (Service 2006, p. 2). This number equates to 8,194 breeding birds, which is substantially greater than historical population estimates for Texas. Numbers declined slightly in 2006 to 3,801 breeding pairs in six nesting colonies (7,602 breeding birds) (Service 2006, p. 2), possibly due to hurricanes in 2005 (see discussion of storm effects under Factor A), but they remained above historical estimates. The 2006 census numbers may be low because survey data appear to be missing for Sundown Island, which traditionally supports a large brown pelican breeding colony. There were 1,676 breeding pairs nesting at Sundown Island in 2007 (Erfling 2007a, p. 1; *http://www.sundownisland.org/default.htm*), which is comparable to the number breeding there in 2005 (Service 2006, p. 2).

Gulf Coast of Mexico—Very little information is available about the status of the brown pelican along the Gulf Coast in Mexico. Aerial surveys indicated that brown pelicans in Mexico were virtually absent as a breeding species along the Gulf of Mexico north of Veracruz by 1968 (Service 1979, p. 10). An aerial survey along this same stretch of coast conducted in March 1986 counted 2,270 birds, down from 4,250 birds estimated in counts conducted between December 1979 and January 1980 (Blankinship 1987, p. 2). However, the counts in 1986 and in 1980 differed in the areas covered and timing of counts and represent only two data points, so it is difficult to compare the earlier and later counts. No recent information for this portion of the species' range was found, so no conclusions on population trends of the brown pelican for the Mexican portion of the Gulf Coast can be drawn.

Summary of Gulf of Mexico Coast—Along the U.S. Gulf Coast, brown pelican populations, while experiencing some periodic or local declines, have increased dramatically from a point of near disappearance in the 1960s and 70s. Brown pelicans were present along the Gulf Coast of Mexico in 1986, but we currently lack recent information on the status of the species in this portion of its range.

West Indies

Van Halewyn and Norton (1984, p. 201) summarized the breeding distribution of brown pelicans throughout the Caribbean region and noted at least 23 sites where the species was reliably reported nesting in the islands of the West Indies at some time since 1950. Based on the most recent estimates available at the time, van Halewyn and Norton (1984, p. 201) documented more than 2,000 breeding pairs throughout the West Indies. More recently, Collazo *et al.* (2000, p. 42) estimated the minimum number of brown pelicans throughout the West Indies at 1,500 breeding pairs. Raffaele *et al.* (1998, pp. 224–225) describe the brown pelican as ''A common year-round resident in the southern Bahamas, Greater Antilles and locally in the northern Lesser Antilles east to Montserrat. It is common to rare through the rest of the West Indies with some birds wandering between islands.

Migrants that breed in North America augment local numbers primarily from November to February.''

In a search for additional seabird breeding colonies in the Lesser Antilles, Collier *et al.* (2003, pp. 112–113) did not find brown pelicans nesting on Anguilla, Saba, and Dominica. In an attempt to survey seabirds in St. Vincent and the Grenadines, Hayes (2002, p. 51) found brown pelicans in the central Grenadines. He notes that brown pelicans were once considered common in the Grenadines and suggests that a small nesting colony may exist there, although there is no historic record of nesting.

St. Maarten—Collier *et al.* (2003, p. 113) reported finding two nesting colonies on St. Maarten Island in 2001, with a total of 64 nesting pairs, but found no breeding pelicans at one site in 2002. Reasons for the lack of breeding activity in 2002 are unknown, although Collier *et al.* (2003, p. 113) suggested a disturbance event could have been the cause. The May 2006 newsletter for the Society for the Conservation and Study of Caribbean Birds (Society for the Conservation and Study of Caribbean Birds, 2006) notes that St. Maarten's proposed Important Bird Areas (IBAs) of Fort Amsterdam and Pelikan Key host regionally important populations of nesting brown pelicans, although numbers of nesting birds are not given.

Puerto Rico and U.S. Virgin Islands—Collazo *et al.* (1998, pp. 63–64) compared demographic parameters between 1980–82 and 1992–95 for brown pelicans in Puerto Rico. The mean number of individuals observed during winter aerial population surveys between 1980 and 1982 was 2,289, while mean winter counts from 1992 to 1995 averaged only 593 birds (Collazo *et al.* 1998, p. 63). Reasons for the decrease in number of wintering birds between the two periods are not known; however, migrational shifts could have contributed to the decrease in winter counts between survey periods (Collazo *et al.* 1998, p. 63). The number of nests observed at the selected study sites did not show such an appreciable decline during the same period for Puerto Rico and the nearby U.S. Virgin Islands, with nest counts ranging from 167 to 250 during 1980 to 1982, compared with 222 and 256 during 1992 to 1993 (Collazo *et al.* 1998, p. 64). Collazo *et al.* (2000, p. 42) estimated approximately 120–200 nesting pairs in Puerto Rico and 300–350 nesting pairs in the U.S. Virgin Islands. See ''Human disturbance of nesting pelicans'' under Factor A below for discussions of possible reasons for decline.

Cuba—Acosta-Cruz and Mugica-Valdés (2006, pp. 10, 65) reported that brown pelicans are a common resident species, with the population augmented by migrants during the winter. Brown pelicans have been documented nesting at five sites in the Archipiélago Sabana-Camagüey and in the Refugio de Fauna Río Máximo (Acosta-Cruz and Mugica-Valdés 2006, pp. 32–33). The number of nesting pairs at Refugio de Fauna Río Máximo was estimated at 16–36 pairs during monitoring in 2001 and 2002 (Acosta-Cruz and Mugica-Valdés 2006, p. 33). No estimates were given for other nesting sites. Acosta-Cruz and Mugica-Valdés (2006, p. 65) estimate the population of brown pelicans in Cuba falls within the range on 1,000 to 4,999 birds and that the population trend is stable.

Summary of West Indies—Although we do not have detailed information on brown pelicans throughout the islands of the West Indies, the distribution of current breeding colonies reported by Collazo *et al.* (2000, p. 42) is similar to that reported by van Halewyn and Norton (1984, pp. 174–175, 201). Estimates of number of breeding pairs differ between the two reports but the studies differed somewhat in the sites reported and neither provided detailed methods for their estimates. Neither Collazo *et al.* (2000, p. 63) nor van Halewyn and Norton (1984, pp.174–175, 201) provided estimates for birds nesting in Cuba, but Acosta-Cruz and Mugica-Valdés (2006, p. 65) estimate the population in Cuba falls within the range on 1,000 to 4,999 birds.

Caribbean and Atlantic Coast of Mexico, Central and South America

No comprehensive population estimates for the Caribbean and Atlantic Coasts of Central and South America are available to our knowledge, although some estimates for other portions of the species' range include birds that nest on the mainland coast or offshore islands (e.g., van Halewyn and Norton's estimate of 6200 pairs in the Caribbean included birds nesting on the mainland and offshore islands of Colombia and Venezuela (1984, p. 201)).

Mexico—Isla Contoy Reserva Especial de la Biosfera off the coast of Cancun, Quintana Roo, Mexico, was the site of Mexico's largest brown pelican nesting colony in 1986, with 300 nesting pairs (Blankinship 1987, p. 2). By the spring of 1996, 700 to 1,000 pairs of brown pelicans were estimated to be nesting on Isla Contoy (Shields 2002, p. 35). Four other colonies in this region accounted for 128 nesting pairs in 1986 (Blankinship 1987, p. 2).

Belize—Miller and Miller (2006, pp. 7, 64) analyzed Christmas Bird Count data collected in Belize from 1969–2005 and reported that brown pelican numbers over this period have remained about the same. References compiled and summarized by Miller and Miller (pp. 144–149) variously report brown pelicans as: ''Common: high density, likely to be seen many places,'' ''Transient, present briefly as migrant,'' ''Resident, species present all year,'' ''apparently secure in Belize.'' Brown pelicans are also reported in one reference as nesting on several cays, but no information on number of nesting birds or locations are given.

Guatemala—Brown pelicans in Guatemala are considered to be a breeding resident (Eisermann 2006, p. 55), although locations of nesting sites and number of breeding pairs are not given. Eisermann (2006, p. 65) estimated the Caribbean slope population of brown pelicans in Guatemala to consist of approximately 376 birds.

Honduras—Thorn *et al* (2006, p. 29) report brown pelicans nesting on the Caribbean coast of Honduras and offshore islands. Brown pelicans are reported as a common resident in Honduras, with numbers estimated to range between 10,000 and 25,000 birds and a stable population trend (Thorn *et al.* 2006, p. 20).

Nicaragua—Zolotoff-Pallais and Lezama (2006, p. 74) report that the number of brown pelicans within Nicaragua falls within the range 1001–5000 and is stable, although they do not indicate whether this estimate represents only breeding birds.

Costa Rica—Brown pelicans are considered a resident species in Costa Rica, but are not reported nesting on Caribbean coast of Costa Rica (Quesada 2006, pp. 9, 46).

Panama—Brown pelicans primarily nest in the Gulf of Panama on the Pacific coast with no nesting reported on the Caribbean coast (Angehr 2005, pp. 15–16). However, brown pelicans do winter along the Caribbean coast of Panama. In 1993 in Panama, 582 brown pelicans were counted (Shields 2002, p. 22) along the Caribbean coast, and Angehr (2005, p. 79) considers brown pelicans to be a ''fairly common migrant'' along the Caribbean coast.

Colombia—Moreno and Buelvas (2005, p. 57) report that brown pelicans occur at four sites on the Caribbean coast of Colombia, with a good population of brown pelicans in the Humedales costeros de La Guajira (coastal wetlands of La Guajira). However, no estimate of numbers of breeding birds was given.

Venezuela—Based on aerial surveys of the Venezuelan coast, Guzman and Schreiber (1987, p. 278) estimated a population size of 17,000 brown pelicans in 25 colonies. Within those breeding colonies, 3,369 nests were counted (Guzman and Schreiber 1987, p. 278). More recently, Rodner (2006, p. 9) confirms that there are approximately 25 brown pelican colonies in Venezuela. Rodner (2006, p. 9) does not give an overall estimate of the brown pelican population in Venezuela but notes more than 1700 nests have been documented in four of the largest breeding colonies, while another recent census of four sites resulted in counts of 2,097 pelicans.

South of Venezuela, brown pelicans are reported as a non-breeding migrant in Guyana (Johnson 2006, p. 5), French Guiana (Delelis and Pracontal 2006, p. 57), Surinam (Haverschmidt 1949, p. 77; Ottema 2006, p. 3), and Brazil (De Luca *et al.* 2006, pp. 3, 40)

Summary of the Caribbean/Atlantic Coast—In general, brown pelicans are broadly distributed on the Caribbean and Atlantic coasts of southern Mexico and Central and South America and are still present throughout their historic range.

California and Pacific Coast of Northern Mexico

The most recent population estimate of the brown pelican subspecies that ranges from California to Mexico along the Pacific Coast is approximately 71,200 nesting pairs, which equates to 142,400 breeding birds (Henny and Anderson 2007, p. 9). They nest in four distinct geographic areas: (1) The Southern California Bight (SCB), which includes southern California and northern Baja California, Mexico; (2) southwest Baja California; (3) the Gulf of California, which includes coastlines of both Baja California and Sonora, Mexico; and (4) mainland Mexico further south along the Pacific coastline (including Sinaloa and Nayarit) (Service 1983, p. 8).

During the late 1960s and early 1970s, the SCB population declined to fewer than 1,000 pairs and reproductive success was nearly zero (Anderson *et al.* 1975, p. 807). In 2006, approximately 11,695 breeding pairs were documented at 10 locations in the SCB: 3 locations on Anacapa Island, 1 on Prince Island, and 1 on Santa Barbara Island in California; 3 on Coronados Islands, 1 on Islas Todos Santos, and 1 on Isla San Martín in Mexico within the SCB (Henny and Anderson 2007, p. 9; Gress 2007). The populations on Todos Santos and San Martín islands were previously extirpated in 1923 and 1974, respectively; however, these were recently found to be occupied (Gress *et al.* 2005, pp. 20–25). Todos Santos Island had about 65 nests in 2004, but there were no nests in 2005. This colony is currently considered to be ephemeral, occurring some years and then not others (Gress *et al.* 2005, p. 28). At San Martín Island, 35 pairs were reported in 1999, a small colony was noted in 2000, and 125–200 pairs were seen in 2002, 2003, and 2004 (Gress *et al.* 2005, pp. 20–25).

The southwest Baja California coastal population has about 3,650 breeding pairs, the Gulf of California population is estimated at 42,970 breeding pairs, and the mainland Mexico population has about 12,880 breeding pairs (Anderson 2007b; Henny and Anderson 2007, p. 9). The Gulf of California population remained essentially the same from 1970 to 1988 (Everett and Anderson 1991, p. 125). It is thought that populations in Mexico have been stable since the early 1970s (when long-term studies began) because of their lower exposure to DDT, although annual numbers at individual colonies fluctuate widely due to prey availability and human disturbance at colonies (Everett and Anderson 1991, p. 133).

Summary of California and Pacific Coast of Northern Mexico—Henny and Anderson (2007, p. 1, 8) concluded that their preliminary estimates of nesting pairs in 2006 suggest a large and healthy total breeding population for California and the Pacific coast of Mexico.

Pacific Coast of Central America and South America

As with the Caribbean and Atlantic coasts of Central and South America, there are no comprehensive population estimates for brown pelicans along this portion of their range.

Guatemala, El Salvador, Honduras, and Nicaragua—Brown pelicans are considered a non-breeding visitor on the Pacific slope of Guatemala (Eisermann 2006, p. 4) with an estimated abundance of 2,118 birds. About 800 brown pelicans are widely distributed along the Pacific Coast of El Salvador (Ibarra Portillo 2006, p. 2). However, Herrera *et al.* (2006, p. 44) reported brown pelicans to be a non-breeding visitor in El Salvador with numbers falling within the range 1,001–10,000 and an increasing trend. Brown pelicans occur on the Pacific Coast of Honduras but are not reported to nest there (Thorn *et al.* 2006, p. 26, 29). Zolotoff-Pallais and Lezama (2006, p. 74) report that the number of brown pelicans within Nicaragua falls within the range 1,001–5,000, but do not indicate locations or breeding status.

Costa Rica—The Costa Rican Ministry for Environment and Energy has reported that several breeding colonies exist on the Pacific Coast from the Nicaraguan border to the Gulf of Nicoya and include the islands of Bolaños and Guayabo (Service 2007a, p. 13). Shields (2002, p. 35) estimated as many as 850 pairs in Costa Rica. However, Quesada (2006, p. 37) estimated the brown pelican population in Costa Rica to fall within the range 10,000–25,000 birds with a stable population trend.

Panama—Estimates of brown pelicans in Panama have varied greatly over the years. In 1981 Batista and Montgomery (1982, p. 70) estimated that 25,500 adults and chicks were known to occur on just the Pearl Island Archipelago in the Gulf of Panama. In 1982 Montgomery and Murcia (1982, p. 69) estimated 70,000 adults occurred at 7 colonies within the Gulf of Panama. By 1988, 6,031 brown pelicans were known from just the Gulf, while in 1998, only 3,017 brown pelicans were thought to occur along the entire Pacific Coast of Panama, including the Gulf (Shields 2002, p. 22). By 2005, 4,877 brown pelican nests were reported just in the Gulf of Panama and a total population was estimated to be about 15,000 individuals for the entire Pacific Coast of Panama, which includes 1,976 nest numbers from Coiba Island (Angehr 2005, p. 6). Angehr (2005, p. 12) also reported that those individual colonies that had been studied experienced an overall increase of 70 percent in nest numbers from 1979 to 2005, and describes the brown pelican on the Pacific Coast of Panama as an ''abundant breeder.''

Colombia—Moreno and Buelvas (2005 p. 57) list brown pelicans as occurring at three protected sites on the Pacific coast of Colombia: Malpelo Island, Gorgona Island, and Sanquianga. Naranjo *et al.* (2006b, p. 178) estimated 2,000–4,000 brown pelicans at Sanquianga on the mainland and 4,800–5,200 on Gorgona Island. Brown pelicans were considered to be one of the most abundant resident species in a 1996–1998 assessment of waterbird populations on the Pacific Coast of Colombia (Naranjo *et al.* 2006a, p. 181). Naranjo *et al.* (2006b, p. 179) concluded that preliminary results of their waterbird monitoring program on the Pacific coast of Colombia indicate that populations of Pelecaniformes (which include brown pelicans) in the three protected areas are stable.

Ecuador—On Ecuador's Galapagos Islands, Shields (2002, p. 35) cites reports of a few thousand pairs. Delaney and Scott (2002, p. 29) estimated the population on the Galapagos to be 5,000

birds. Santander *et al.* (2006, p. 44, 49) reported that brown pelicans in the Galapagos number less than 10,000 and are considered common there, while populations on the mainland range from 25,000 to 100,000. The Ministerio del Ambiente of Ecuador has reported that nesting brown pelicans are widely distributed and fairly common along the mainland coast of that country (Rojas 2006).

Peru—Shields (2002, p. 22) summarizes estimates of brown pelicans in Peru at 420,000 adults in 1981–1982, 110,000 in 1982–1983, 620,000 in 1985–1986, and 400,000 in 1996. Franke (2006, p. 10) reported that a 1997 survey of guano birds counted 140,000 brown pelicans with an increasing population trend reported; however, it is unclear whether that number represents a total estimate of the brown pelican population in Peru or a subset of birds nesting on islands managed for guano production.

Chile—The range of brown pelicans in Chile extends from the extreme northern city of Arica (Rodríguez 2006) to occasionally as far south as Isla Chiloé (Aves de Chile 2006, p. 1). The total population size for Chile is unknown (Shields 2002, p. 35). The breeding population on Isla Pájaro Niño in central Chile was 2,699 pairs in 1995–1996, 1,032 pairs in 1996–1997, and none during the 1997–1998 El Niño year (Simeone and Bernal 2000, p. 453).

Two sightings of brown pelicans in Argentina in 1993 and 1999 are considered ''hypothetical'' records because they are not documented by specimens, photographs, or other concrete evidence (Lichtschein 2006).

Summary of Pacific Coast of Central and South America—Brown pelicans are abundant breeders along the Pacific coast of Central and South America.

Summary—Global Population Estimates

Population estimates for various States, regions, and countries reviewed above are not strictly comparable because they were not made using any standard protocol or methodology, and in many cases the process by which the estimates were developed is not described. While in some cases these estimates may be reliable in describing local abundance and trends, because of their incomparability, they have limited value in estimating absolute size or trends in the global population. However, because these estimates are the best available information, we attempted to use some conservative assumptions in tabulating these data in order to make a conservative estimate of the global population size of the brown pelican (Service 2007a, pp. 43–45 and 60–62). This total, or global estimate, is for the listed brown pelican, which does not include the Atlantic coast of the U.S., Florida, and Alabama. The total based on regional estimates is over 620,000 individuals, which includes an estimated 400,000 pelicans from Peru (Service 2007a, pp. 43–45 and 60–62). This is likely a conservative estimate given that estimates for some countries given above (for example, estimates for Colombia and Cuba) were not readily available at the time we conducted our 5-year review. Other recent estimates yield similar numbers. Kushlan *et al.*'s (2002, p. 64) estimate for the North American Waterbird Conservation Plan area, which includes Canada, the U.S., Mexico, Central America, the Caribbean, and Caribbean islands of Venezuela, was 191,600–193,700 breeders. Delaney and Scott (2002, p. 29) applied a correction factor to Kushlan *et al.*'s estimate to account for immature birds and non-breeders to estimate a population of 290,000 birds. Neither estimate includes birds on the Pacific Coast of South America. Delaney and Scott (2002, p. 29) additionally estimated the brown pelican population on the Galapagos to be about 5,000 birds, and the population on the Pacific Coast of South America (estimate is for the subspecies *Pelecanus occidentalis thagus*, found in Peru and Chile) to range from 100,000–1,000,000 birds. Shields' (2002, p. 21) population estimate of 202,600–209,000 brown pelicans also did not include the Peruvian subspecies. While each of these estimates covers slightly different areas, they are all in general agreement and indicate that the listed population of brown pelicans, excluding the Peruvian subspecies, totals 200,000 or more individuals, while the Peruvian subspecies numbers in the few hundred thousand.

Recovery Plan

Section 4(f) of the Act directs us to develop and implement recovery plans for listed species. While brown pelicans were listed throughout their range, recovery planning efforts for the brown pelican focused primarily on those portions of the species' range within the United States. We have published three recovery plans for the brown pelican: (1) Recovery Plan for the Eastern Brown Pelican (Service 1979); (2) the California Brown Pelican Recovery Plan (Service 1983); and (3) Recovery Plan for the Brown Pelican in Puerto Rico and the U.S. Virgin Islands (Service 1986).

Recovery plans are not regulatory documents and are instead intended to provide guidance to the Service, States, and other partners on methods of minimizing threats to listed species and on criteria that may be used to determine when recovery is achieved. There are many paths to accomplishing recovery of a species and recovery may be achieved without all criteria being fully met. For example, one or more criteria may have been exceeded while other criteria may not have been accomplished. In that instance, the Service may judge that, overall, the threats have been minimized sufficiently and the species is robust enough to justify reclassifying the species from endangered to threatened or perhaps delisting the species. In other cases, recovery opportunities may have been recognized that were not known at the time the recovery plan was finalized. These opportunities may be used instead of methods identified in the recovery plan. Likewise, information on the species may be learned that was not known at the time the recovery plan was finalized. The new information may change the extent that criteria need to be met for recognizing recovery of the species. Overall, recovery of species is a dynamic process requiring adaptive management. Analyzing the degree of recovery of a species is also an adaptive management process that may or may not fully follow the guidance provided in a recovery plan. The following discussion provides a brief review of recovery planning for the brown pelican, as well as an analysis of the recovery criteria and goals as they relate to evaluating the status of the species.

The Recovery Plan for the Eastern Brown Pelican, which includes the delisted populations and the currently listed Texas, Louisiana, and Mississippi populations, does not identify recovery criteria because the causes of the species' decline were not well understood at the time the plan was prepared. The recovery team viewed the wide distribution of the species, rather than absolute numbers, as the species' major strength against extinction (Service 1979, p. iv). The recovery plan states a general objective to re-establish brown pelicans on all historically used nesting sites in Louisiana and Texas (Service 1979, p. iii). The plan identified 9 sites in Louisiana and 11 sites in Texas. These included historic, current (at the time of the recovery plan), and restored islands. As of 2005 (prior to Hurricanes Katrina and Rita), 11 sites in Louisiana were being used for nesting by brown pelicans: Brush Island, Martin Island, North Island, Pelican Point, West Breton Island, Baptiste Collette, Queen Bess Island, Wine Island, Raccoon Island, Rabbit

Island, and Shallow Bayou. This list includes 7 previously unknown sites (Hess and Linscombe 2006, pp. 1–4, 7–8). In 2006, nesting occurred at 15 sites that included the previously mentioned 11. Hurricane-caused habitat degradation forced many birds to seek out new nesting locations including three additional sites in the Pelican Point area, and one on East Queen Bess Island (Hess and Linscombe 2007, pp. 1, 3). As of 2006, 12 sites in Texas were being used for nesting by brown pelicans: Marker 52 Spoil Island, North Deer Island, Evia Island, Sunfish Island, Shamrock Island, Deadman Islands, South Pass Islands A and B, Pelican Island, Sundown Island, Little Pelican Island, and Dressing Point (Service 2006, p. 2). The northern Gulf of Mexico coast is subject to frequent severe tropical storms and hurricanes, which can cause significant changes to brown pelican nesting habitat. Past storms have resulted in changes to or loss of historical nesting sites, but brown pelicans seem well adapted to responding to losses of breeding sites by moving to new locations (Hess and Durham 2002, p. 7; Wilkinson *et al.* 1994, p. 425; Williams and Martin 1968, p. 136), and the species has clearly shown its ability to rebound (Williams and Martin 1968, p. 130; Holm *et al.* 2003, p. 432; Hess and Linscombe 2006, pp. 5, 13) (see ''Storm effects, weather and erosion impacts to habitat'' under Factor A for further discussion). While nesting is not occurring on all historically identified sites in Texas and Louisiana, the number of currently used nesting sites meets or exceeds the numbers identified in the recovery plan and support sustainable populations of brown pelicans. Because brown pelicans have demonstrated the ability to move to new breeding locations when a nesting island is no longer suitable, meeting the exact number and location of nesting sites in Texas and Louisiana identified in the recovery plan is not necessary to achieve recovery for the brown pelican. As discussed further below, we also have considered the population's wide distribution, numbers, and productivity, as indicators that the threats have been reduced such that the population is recovered and sustainable.

The Recovery Plan for the Brown Pelican in Puerto Rico and the U.S. Virgin Islands has delisting criteria solely for the area covered by the plan. The criteria are to maintain a 5-year observed mean level of: (1) 2,300 individuals during winter, and (2) 350 breeding pairs at the peak of the breeding season. Both recovery criteria are solely based on demographic characteristics and do not provide an explicit reference point for determining whether threats have been reduced. The levels in the criteria were based on studies of brown pelicans from 1980 to 1983 (Collazo 1985). Subsequent winter counts from 1992 to 1995 in Puerto Rico were 74 percent lower than during 1980–1982 (2,289 compared to 593 individuals). Although the 1992 to 1995 counts did not include the Virgin Islands, it appears likely that the first criterion had not been met as of 1995 (Collazo *et al.* 1998). However, reasons for lower counts are unknown. Collazo *et al.* (1998, pp. 63–64) concluded that habitat was not limiting and suggested that migrational shifts could have contributed to the decrease in numbers and that longer term monitoring of at least 6 to 8 years is needed to define an acceptable range of population parameters for brown pelicans in the Caribbean. Collazo et al (1998, p. 64) also concluded that contaminants are not affecting brown pelican reproduction. Thus, while the first criterion, based on 4 years of data, may not be sufficient to establish a realistic figure to reflect recovery, it also does not address whether threats to the species are still present. Also, because the criterion applies to only a small portion of the species' range, as well as only a portion of the species' range in the Caribbean, we do not consider it appropriate for determining whether the brown pelican is recovered globally. The second recovery criterion is the more important of the two as it reflects population productivity. The number of pairs seemed to be holding steady between the early 1980s and the 1990s with estimates given by Collazo *et al.* (2000, p. 42) of 165 pairs for Puerto Rico and 305–345 pairs for the U.S. Virgin Islands. While this estimate is not a 5-year observed mean, the estimated number is consistent with the recovery criterion for number of breeding pairs.

The California Brown Pelican Recovery Plan only covers the California brown pelican subspecies (*P. o. californicus*), which includes the Pacific Coast of California and Mexico, including the Gulf of California. The primary objective of this recovery plan is to restore and maintain stable, self-sustaining populations throughout this portion of the species' range. To accomplish this objective, the recovery plan calls for: (1) Maintaining existing populations in Mexico; (2) assuring long-term protection of adequate food supplies and essential nesting, roosting, and offshore habitat throughout the subspecies' range; and (3) restoring population size and productivity to self-sustaining levels in the SCB at both the Anacapa and Los Coronados Island colonies. Existing populations appear to be stable in Mexico and throughout the subspecies range (Everett and Anderson 1991, p. 133; Henny and Anderson 2007, p. 1, 8), food supplies are assured by the Coastal Pelagic Species Fishery Management Plan, and the majority of essential nesting and roosting habitat throughout the species' range is protected (see ''Summary of Factors Affecting the Species'' below for further discussion). Therefore, criteria 1 and 2 of the recovery plan have been met.

For population and productivity objectives, the recovery plan included the following additional criterion for the subspecies to be considered for delisting: (a) When any 5-year mean productivity for the SCB population reaches at least 0.7 young per nesting attempt from a breeding population of at least 3,000 pairs, the subspecies should be considered for threatened status; and (b) When any 5-year mean productivity for the SCB population reaches at least 0.9 young per nesting attempt from a breeding population of at least 3,000 pairs. Consideration for reclassification to threatened would require a total production averaging at least 2,100 fledglings per year over any 5-year period. Consideration for delisting would require a total production averaging at least 2,700 fledglings per year over any 5-year period.

The criterion, including both productivity and population size, for downlisting to threatened has been met at least 10 times since 1985. The delisting population criterion of at least 3,000 breeding pairs has been exceeded every year since 1985, with the exception of 1990 and 1992, which saw only 2,825 and 1,752 pairs, respectively. In most years, the nesting population far exceeds the 3,000 pair delisting goal; it has exceeded 6,000 pairs for 10 of the last 15 years (Gress 2005). Additionally, the delisting criterion of at least 2,700 fledglings per year over any 5-year period has been met at least 11 times since 1985 (Gress 2005). However, the productivity criterion for delisting, while it has improved greatly since the time of listing and has neared the criterion for delisting a few times, has not been met, and the SCB population consistently has low productivity, with a mean of 0.63 young fledged per nesting attempt from 1985 to 2005 (Gress and Harvey 2004, p. 20; Gress 2005).

Productivity is an important parameter used for evaluating population health; however, it is difficult to determine an objective and

appropriate minimum value. The 0.9 young per nesting attempt given in the recovery plan was the best estimate based on a review of brown pelican reproductive parameters in Florida and the Gulf of California (Schreiber 1979, p. 1; Anderson and Gress 1983, p. 84), because pre-DDT productivity for the SCB population was unknown. Despite the fact that this goal has not been reached, reproduction has been sufficient to maintain a stable population for over 20 years. Most colonies expanded during this interval, including the long-term colonization of Santa Barbara Island, which suggests that productivity has been sufficient to maintain a stable-to-increasing population. In conclusion, the first two recovery criteria for the California Brown Pelican Recovery Plan have been met. As discussed above, the population component of the third criterion has been far exceeded, while the productivity component has not been met. We have concluded, based on current population size and productivity, that the productivity component of the third criterion is no longer appropriate and that current productivity is sufficient to maintain a viable population of brown pelicans.

Recovery Planning Summary—The three recovery plans for the brown pelican discussed above have not been actively used in recent years to guide recovery of the brown pelican because they are either outdated, lack recovery criteria for the entire species, or in the case of the eastern brown pelican, lack recovery criteria all together. No subsequent revisions have been made to any of these original recovery plans. No single recovery plan covers the entire range of the species, and the remainder of the range outside the U.S., including Central America, South America, and most of the West Indies is not covered by a recovery plan. Thus, these focus areas for recovery, which do not have formal or regulatory distinction, are outdated. Additionally, the recovery criteria in these plans do not specifically address the five threat factors used for listing, reclassifying, or delisting a species as outlined in section 4(a)(1) of the Act. Consequently, the recovery plans do not provide an explicit reference point for determining the appropriate legal status of the brown pelican based either on alleviating the specific factors that resulted in its initial listing as an endangered species or on addressing new risk factors that may have emerged since listing. As noted above, recovery is a dynamic process and analyzing the degree of recovery requires an adaptive process that includes not only evaluating recovery goals and criteria but also new information that has become available. Thus, while some recovery criteria and many of the goals in the three brown pelican recovery plans have been met, our evaluation of the status of the brown pelican in this proposal is based largely on the analysis of threats in our recently completed 5-year review (Service 2007a, pp. 1–66). This review is available at *http://ecos.fws.gov/docs/five_year_review/doc1039.pdf*.

Summary of Factors Affecting the Species

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 may determine a species to be an endangered or threatened species because of one or more of the five factors described in section 4(a)(1) of the Act, and we must consider these same five factors in delisting a species. We may delist a species according to 50 CFR 424.11(d) if the best available scientific and commercial data indicate that the species is neither endangered nor threatened for the following reasons: (1) The species is extinct; (2) The species has recovered and is no longer endangered or threatened (as is the case with the brown pelican); and/or (3) The original scientific data used at the time the species was classified were in error.

A recovered species is one that no longer meets the Act's definition of threatened or endangered. Determining whether a species is recovered requires consideration of the same five categories of threats specified in section 4(a)(1) of the Act. For species that are already listed as threatened or endangered, this analysis of threats is an evaluation of both the threats currently facing the species and the threats that are reasonably likely to affect the species in the foreseeable future after delisting or downlisting and the removal or reduction of the Act's protections.

A species is ''endangered'' for purposes of the Act if it is in danger of extinction throughout all or a ''significant portion of its range'' and is ''threatened'' if it is likely to become endangered within the foreseeable future throughout all or a ''significant portion of its range.'' The word ''range'' in the ''significant portion of its range'' (SPR) phrase refers to the range in which the species currently exists. For the purposes of this analysis, we will evaluate whether the currently listed species, the brown pelican, should be considered threatened or endangered. Then we will consider whether there are any portions of brown pelican's range in danger of extinction or likely to become endangered within the foreseeable future.

As discussed below in our analysis of factors affecting the species, we do not foresee any changes in the current protections for brown pelican. For example, we do not expect any significant changes to current non-Endangered Species Act habitat protections, regulations affecting pesticide use and licensing, the Migratory Bird Treaty Act, Magnuson-Stevens Fishery Conservation and Management Act, or the global Stockholm Convention on Persistent Organic Pollutants. We could consider that many of these protections would remain in place in perpetuity. However, considering this as a timeframe for analysis could introduce a considerable level of uncertainty and it may not be reasonable to assume that we can project an analysis out in perpetuity. Therefore, for the purposes of our analysis, we considered as a lower bound the timeframe over which it would be reasonable to expect population level or demographic effects of threats to be detected and to put the species at risk of becoming endangered. Factors most likely to affect population levels and key demographic characteristics of brown pelicans include those that affect reproduction over a period of several years, and include factors such as disturbance of nest sites, contaminants, and availability of prey. Therefore, for the purposes of this proposed rule, we consider ''foreseeable future'' for the brown pelican at a minimum to be 30 years, since it is a reasonable timeframe for analysis of factors identified that could affect the species in the future and as they relate to brown pelican biology. While average life spans are not known, fewer than 2 percent are thought to live past 10 years of age, and the oldest known individual was 43 years old (Schreiber and Mock 1988, p. 178). Additionally, since age at first nesting is generally 3 to 5 years (Shields 2002, p. 18), the average brown pelican breeds at 4 years of age, thereby replacing itself within 8 years. Therefore, 30 years, which incorporates one long life cycle and 10 possible generations, represents a reasonable biological timeframe to determine if threats could be significant.

The following analysis examines all five factors currently affecting, or that are likely to affect, the brown pelican distribution that is currently listed within the foreseeable future.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Nesting Habitat

Brown pelicans breed annually from spring to summer above 30 degrees north latitude, annually from winter to spring between 20 and 30 degrees north latitude, and irregularly throughout the year on 8.5- to 10-month cycles below 20 degrees north latitude (Shields 2002, p. 12). Brown pelicans usually breed on small, predator-free coastal islands. Brown pelicans use a wide variety of nesting substrates. Nests are built on the ground when vegetation is not available, but when built in trees, they are about 1.8 meters (m) to 12.2 m (6 to 40 feet (ft)) above the water's surface (McNease *et al.* 1992, p. 252; Jiménez 2004, pp. 12–17). Along the Pacific Coast of California south to Baja California and in the Gulf of California, brown pelicans nest on dry, rocky substrates, typically on off-shore islands (Service 1983, pp. 5–6). Along the U.S. Gulf Coast, brown pelicans mainly nest on coastal islands on the ground or in herbaceous plants or low shrubs (Shields 2002, p. 13; Wilkenson *et al.* 1994, pp. 421–423), but will use mangrove trees (*Avicennia* spp.) if available (Lowery 1974, p. 127; Blus *et al.* 1979a, p. 130). In some areas of the Caribbean, along the Pacific Coast of Mexico, and the Galapagos Islands, mangroves (*Avicennia* spp., *Rhizophora* spp., *Launcularia* spp.) are the most common nesting substrate, although other substrates are used as well (Collazo 1985, pp. 106–108; Guzman and Schreiber 1987, p. 276; Service 1983, p. 15; Shields 2002, p. 13). Various types of tropical forests, such as tropical thorn and humid forests, also provide nesting habitat for brown pelicans in southern Mexico, South and Central America, and the West Indies (Collazo 1985, pp. 106–108; Guzman and Schreiber 1987, p. 2). Peruvian brown pelicans (found in Peru and Chile) nest only on the ground (Shields 2002, p. 13).

Nesting habitat destruction from coastal development. Within the United States, the majority of brown pelican nesting sites are protected through land ownership and protection by conservation organizations and local, State, and Federal agencies. We are not aware of any losses of brown pelican nesting habitat to coastal development within the United States. In countries outside of the United States, some coastal and mangrove habitat used by brown pelicans has been lost to recreational and other coastal developments (Collazo *et al.* 1998, pp. 63). Mainland nesting colonies in Sinaloa and Nayarit, Mexico, have been impacted by increasing mariculture (the cultivation of marine life) and agriculture through habitat degradation, disturbance, and some removal of mangrove habitat (Anderson *et al.* 2003, p. 1097–1099; Anderson 2007a), although the extent of impacts is unknown. Van Halewyn and Norton (1984, p. 215) cited cutting and loss of mangrove habitat as a threat for seabirds, including brown pelicans, in the Caribbean. Aside from these limited accounts, we are not aware of any significant losses of brown pelican nesting habitat from coastal development anywhere within its range.

Some destruction of current and potential brown pelican nesting habitat is likely to occur in the future. However, a large number of brown pelican nesting sites throughout the species' range are currently protected (see discussion below). In some cases, loss of mangrove habitat has been specifically cited. However, brown pelicans do not nest exclusively in mangroves, they may utilize other nesting substrates, and they readily colonize new nesting sites in response to changing habitat conditions. For example, Collazo *et al.* (1998, p. 63) documented the loss of one nesting site in Puerto Rico, but stated the belief that the pelicans relocated to a new nesting colony nearby (see also discussion of colonization of new sites under ''Storm effects, weather and erosion impacts to habitat''). Destruction of nesting habitat is likely to only affect brown pelicans on a local scale where nesting colonies overlap with coastal or mariculture development. In cases where nesting habitat destruction results in the loss of a nesting site, it is likely to be limited to a single season of lost reproduction because birds will likely disperse to other colonies or establish a new colony in a new location. Because numerous brown pelican nesting sites are protected, brown pelicans may relocate to new nesting sites if any unprotected sites are destroyed, and any loss of nesting habitat is likely to result in only limited loss of reproduction that will not affect population levels, we do not believe that habitat destruction currently threatens brown pelicans, nor do we believe it will it become a threat that endangers the brown pelican throughout all of its range in the foreseeable future.

Storm effects, weather and erosion impacts to habitat. Many nesting islands along the U.S. Gulf Coast have been impacted by wave action, storm surge erosion, and a lack of sediment deposition (McNease and Perry 1998, p. 9), resulting in loss or degradation of nesting habitat. Since 1998, nesting habitat east of the Mississippi River in Louisiana has undergone continual degradation or loss from tropical storms and hurricanes, resulting in a reduced number of successfully reared brown pelican young in this area (Hess and Linscombe 2006, p. 4). In 2003 and 2004, brown pelican nesting and reproduction was distributed approximately equally between areas east and west of the Mississippi River. After tropical storms in 2004, nesting habitat east of the Mississippi River was reduced, resulting in a shift to 95 percent of nesting and reproduction to west of the Mississippi River. In 2005, hurricanes Katrina and Rita resulted in approximately 349 km^2 (217 mi^2) of coastal land loss (Barras 2006, p. 4). This figure represents total coastal land loss, including interior marshes, and while a figure for loss of barrier islands would be a more appropriate measure of impacts to brown pelicans, we are not aware of any estimates for barrier island loss. While Louisiana's brown pelican nesting islands east of the Mississippi River were reduced by over 70 percent and what remains is vulnerable to overwash from future storm tides, at the time, these islands supported only about 5 percent of the total Louisiana population of brown pelicans (Hess and Linscombe 2006, pp. 3, 6; Harris 2006). Louisiana brown pelican nesting islands west of the Mississippi River, which accounted for 95 percent of the 2005 brown pelican breeding population, were degraded, but still supported the four main nesting colonies (Hess and Linscombe 2006, p. 5) (see discussion of nesting in Louisiana under Distribution and Population Estimate).

In some instances, brown pelicans have responded to losses of breeding sites by dispersing and using other areas (Hess and Durham 2002, p. 7). Hess and Linscombe (2001, p. 5) believe that a shift in nesting from the Baptiste Collette area to Breton Island in Louisiana was the result of high Mississippi River levels and associated muddy water which limited sight feeding. Additionally, two new brown pelican nesting colonies were established between 2000 and 2005 on Baptiste Collette and Shallow Bayou (Hess and Linscombe 2006, p. 5). Wilkinson *et al.* (1994, p. 425) reported the loss of large brown pelican nesting colonies on Deveaux Bank in South Carolina following a hurricane and subsequent movement and use of new nesting locations on that island and on Bird Key Stono. Hess and Linscombe (2001, p. 4) believe that tropical storm and hurricane induced habitat damage to the Chandeleur Islands contributed to

the initial dispersal of pelicans to southwest Louisiana and the formation of a nesting colony on newly created habitat at the Baptiste Collette bar channel.

While pelicans generally exhibit nest site fidelity, in Texas and Louisiana they have established breeding colonies on islands artificially created or enhanced by material dredged by the U.S. Army Corps of Engineers (Corps) from nearby ship channels (Hess and Linscombe 2001, pp. 5–6; Hess and Linscombe 2006, p. 5). For example, Little Pelican Island and Alligator Point in Texas are maintained by the disposal of dredged material (Yeargan 2007). The Corps in Louisiana beneficially uses approximately 8.5 million m^3 (11.1 million yds^3) of dredged material each year in the surrounding environment (Corps 2004, p. xi). For example, dredged material was used to retard erosion and secure Queen Bess Island as brown pelican nesting habitat (McNease *et al.* 1994, p. 8). It was also used to restore and enhance brown pelican habitat on Raccoon Island in 1987 and Last Island in 1992 following Hurricane Andrew (McNease and Perry 1998, p. 10; Hess and Linscombe 2001, p. 5). Use of these islands by pelicans demonstrates both the utility of these artificially generated habitats and the pelican's ability to find and establish nesting colonies on them.

While storms in Louisiana and the U.S. Gulf Coast are expected to continue, there are numerous projects that are intended to protect the coast from this land loss. Coastal habitat protection and restoration have been and will continue to be priorities for Louisiana, since coastal land loss has much broader negative implications to the State economy, oil and gas production, navigation security, fisheries and flyways, and strategic petroleum reserves. The Coastal Wetlands Planning, Protection, and Restoration Act of 1990 (CWPPRA), which provides Federal grants to acquire, restore, and enhance wetlands of coastal States, is one of the first programs with Federal funds dedicated exclusively to the long term restoration of coastal habitat (104 Stat. 4779). As of April 2006, 10 CWPPRA barrier island restoration projects in Louisiana have been implemented (costing over $75.8 million), with another 9 currently under construction or awaiting construction. Several of these directly enhance or protect current brown pelican nesting habitat (for example, Raccoon Island), while the rest occur on islands that were historically used or could be used for nesting in the future (Louisiana Coastal Wetlands Conservation and Restoration Task Force 2006, p. 13).

Three other plans that may be implemented are Coast 2050 and the Louisiana Coastal Area Ecosystem Restoration (LCA) Plan, both related to the CWPPRA, and the Draft Coastal Impact Assistance Plan. Although not yet implemented, Coast 2050 and the LCA plan also focus on the protection and restoration of Louisiana coastal areas, including barrier island protection and restoration. While these plans are not considered as existing regulatory mechanisms for the purposes of this proposed delisting and are not designed specifically to benefit brown pelicans, we are aware that they may provide opportunities for us to monitor and to continue to reduce and minimize the threats to brown pelicans from habitat loss and degradation caused by storms in the Louisiana Gulf Coast region after they are delisted, and demonstrate the level of importance State and Federal agencies place on maintaining and protecting those areas.

In other portions of the species' range, storms and weather conditions may also remove or degrade vegetation used for nesting by brown pelicans. Hurricanes (category 3 or higher) such as Hugo and Georges have severely affected red (*Rhizophora mangle*) and black (*Avicennia germinans*) mangrove habitat in Puerto Rico. Other coastal trees such as *Bursera simaruba* and *Pisonia subcordata*, which are prime nesting trees for pelicans in the U.S. Virgin Islands, have also been completely defoliated or torn down by hurricanes (Saliva 1989). Mangroves and other coastal trees may either be uprooted, completely defoliated, or killed (through dislodging of submerged roots by strong wave action) and several breeding seasons may pass before those areas recover. Similar effects of hurricanes and storms on nesting vegetation would be expected in other areas where brown pelicans nest in trees (some areas in the Caribbean, portions of the Pacific coast of Mexico, and parts of Central and South America). Along the U.S. Gulf Coast, mangroves can be killed off by extreme cold weather (Blus *et al.* 1979a, p. 130; McNease *et al.* 1992, p. 225; McNease *et al.* 1994, p. 6). Coastal black mangroves (*Avicennia germinans*), decimated by freezes since the 1980s, were historically the nesting shrub of choice for brown pelicans in Louisiana, but now clumps of vegetation, like dense stands of non-woody plants or low woody shrubs, are used (McNease *et al.* 1992, p. 225; Shields *et al.* 2002, p. 23).

While localized losses and degradation of nesting habitat from hurricanes, storms, and erosion have been documented (Wilkinson *et al.* 1994, p. 425; Hess and Linscombe 2006, p. 4), we believe brown pelicans are capable of recovering from these losses. For example, brown pelican nests producing young in Louisiana have generally increased from a low in 1993 of 5,186 to a high of 16,501 in 2004 (Hess and Linscombe 2006, pp. 5, 13). During this time frame, numerous tropical storms and hurricanes have made landfall on the Louisiana coast (Hess and Linscombe 2006, pp. 9–11). As of May 2006, less than a year after Hurricanes Katrina and Rita, Hess and Linscombe (2007, p. 4) noted a total of 8,036 nests in fifteen colonies. Additionally, brown pelicans have shown they are capable of dispersing from nesting sites. Examples of this dispersal are the natural expansion and population growth observed following the reintroduction program in Louisiana (McNease and Perry 1998, p. 1) and more recently with the establishment of a new nesting colony at Rabbit Island (Hess and Linscombe 2003, p. 5). It is reasonable to expect island erosion will continue; however, it is also reasonable to expect State and Federal agencies to continue active maintenance and restoration of barrier islands through programs such as the CWPPRA. We lack data on the effects of storms and erosion elsewhere in the range of the brown pelican. However, outside of the Gulf of Mexico and Caribbean, storms generally are less frequent and less severe. It is evident from the information on pelican responses to storms in the Gulf of Mexico that they are capable of successfully adapting to the changes that storms bring. In addition, brown pelicans are broadly distributed along the Gulf of Mexico, nesting at 15 sites in Louisiana in 2006 (LDWF 2007, pp. 1, 3) and 12 sites in Texas in 2006 (Service 2006, p. 2). The species' broad distribution and multiple nesting colonies reduce the risk that any single storm would affect the entire Gulf coast population of brown pelicans. Therefore, we believe that habitat modification or destruction of brown pelican nesting habitat by storms or coastal erosion will not endanger the brown pelican throughout all of its range in the foreseeable future.

Human disturbance of nesting pelicans. Adverse effects on nesting pelicans from human disturbance by recreationists, scientists, educational groups, and fishermen have been well documented (Anderson 1988, p. 342; Anderson and Keith 1980, pp. 68–69). Disturbance at nesting colonies, such as walking among or near nests, has been

shown to adversely affect reproductive success of pelicans, and even result in abandonment of nests or entire colonies (Anderson and Keith 1980, p. 69).

Collier *et al.* (2003, pp. 112–113) offer human disturbance as the cause of a suspension of breeding activity in a brown pelican colony on St. Martin in the Lesser Antilles. The colony was near a resort with heavy boat and jet ski use. When a jet ski passed within about 400 m (1,312 ft) of a colony 40 pelicans flushed, leaving their nests unattended and unprotected from predators, but none flushed when a slow-moving dive boat approached within 10 m (33 ft) of the colony.

In Puerto Rico and the U.S. Virgin Islands, most breeding colonies of brown pelicans are located within Commonwealth or Federal protected areas. The adverse effects of human disturbances by recreational vessels and fishermen have been suggested as potentially resulting in abandonment of pelican nests located at low elevations and close to the water (Jiménez 2004, pp. 12–17). Pelicans have been seen flushing from nests when boats approached within 152.4 m (500 ft), and have been noted to leave their nests unattended for as long as humans remained within this proximity (Saliva 1996a; Saliva 2003). Raffaele *et al.* (1998, pp. 224–225) summarized historical records of pelicans nesting in Puerto Rico and noted their extirpation from at least three colonies and suggests boat traffic as the cause. Schreiber (1999, p. 20) noted that one of these extirpated colonies may have moved to a nearby bay, hidden from boaters.

Along Mexico's Pacific Coast, human disturbance at colonies has resulted in nest abandonment, predation of eggs and chicks, and total abandonment or relocation of individual colonies (Anderson and Keith 1980, p. 69). Fishermen, birders, photographers, educational groups, and egg collectors (in past years) have occasionally disturbed the pelican colonies at critical times during the breeding season (Gress *et al.* 2005, p. 7). However, nesting brown pelicans are monitored annually as an indicator species in the Gulf of California (Godinez *et al.* 2004, p. 48), and although annual numbers fluctuate widely due to a number of factors, including disturbances at some colonies, the populations are considered stable (Everett and Anderson 1991, p. 133; Anderson and Palacios 2005, p. 2).

Although the threat of human disturbance has declined in Mexico as a result of conservation efforts and increased protection (Luckenbach Trustee Council 2006, p. 82), enforcement remains limited (Anderson *et al.* 2003, pp. 1103–1104), and many colonies are still susceptible to disturbances (Godinez 2006). However, effects from disturbance have not been substantial enough to result in documented population declines in the last 20 years (Anderson *et al.* 2004, p. 37). Therefore, while these local impacts are still occurring, we do not believe they currently threaten brown pelicans or will become a threat that endangers the brown pelican throughout all of its range in the foreseeable future.

Future conservation actions in Mexico that are not a factor in our proposal to delist the brown pelican, but would benefit brown pelicans and reduce human disturbance if implemented, are the restoration of seabird colonies on five pelican nesting islands along the Pacific Coast of Baja California as part of the Luckenbach Restoration Plan and the Montrose Settlements Restoration Program (MSRP) (Luckenbach Trustee Council 2006, pp. 74–82, 100, 106; MSRP 2005, pp. D5–11–12). Proposed restoration activities include reducing sources of disturbance at colonies by redesigning paths and walkways to manage human traffic, shielding light sources, and performing public outreach and education (Luckenbach Trustee Council 2006, pp. 20, 77).

While human disturbance can cause brown pelicans to flush from their nests, there are also situations where the birds have become habituated to nearby intense uses (for example, aircraft activity) without obvious effects on breeding efforts (Schreiber *et al.* 1981, p. 398). We believe the current protections provided for nest sites and to prevent human disturbances to U.S. nesting colonies, as well as the protections afforded by State laws, will adequately continue to protect brown pelicans throughout their range within the United States. Additionally, while human disturbance to brown pelican nesting colonies is still occurring outside of the United States, most of the countries in the species' range are protecting, and are expected to continue to protect, brown pelicans through implementation of restoration plans, designated biosphere reserves and parks, and land ownership and protection by conservation organizations and local, State, and Federal governments (see below for discussion of nesting habitat protections). These protections are implemented through various mechanisms that do not rely on the U.S. Endangered Species Act and therefore are expected to continue if the brown pelican is delisted. The current levels of human disturbance are not sufficient to cause population declines of brown pelicans, because brown pelicans may become habituated to some level of disturbance, may shift nesting locations (as indicated above in discussion of loss of nesting habitat), or may only experience a temporary loss of reproduction, such as for a single breeding season. While human disturbance of brown pelican colonies is continuing, we do not believe the level of disturbance is currently sufficient to result in population declines of brown pelicans throughout all of the species' range in the foreseeable future.

Nesting Habitat Protection

A number of factors may affect the quantity and quality of brown pelican nesting habitat from year to year. However, almost all the U.S. nesting sites are protected from habitat destruction and human disturbance, and a significant number of nesting sites outside the United States are also protected. Protections include designations as wildlife refuges, biosphere reserves, and national parks, as well as land ownership and protection by conservation organizations and local, State, and Federal governments. Because these protections are designed to not only protect brown pelicans, but other resources as well, such as other species of colonial waterbirds, and wetland, coastal, and marine habitats, we do not expect these protections to change if the brown pelican is delisted.

Gulf of Mexico Coast. Many of the Texas islands used by brown pelicans are leased, managed, and monitored by local chapters of the National Audubon Society (Audubon) (Audubon 2007a, p. 1). Audubon staff assess the conditions of brown pelican islands throughout the year in Texas (Yeargan 2007) and implement management actions to address issues such as erosion and fire ant control. Additionally, there are local ''Bird Wardens'' that patrol the islands regularly (Audubon 2007b, p. 1). The two largest brown pelican nesting colonies, both in Corpus Christi Bay, Texas (Sundown Island, owned by the Port of Corpus Christi, and Pelican Island, owned by the Texas General Land Office), are part of the Texas Audubon Society's Coastal Sanctuaries program (Yeargan 2007; Audubon 2007b, p. 1; Service 2007b, p. 2). Audubon also owns North Deer Island, which houses the most productive waterbird colony in Galveston Bay and is the largest natural island remaining in the bay (Audubon 2007c, p. 1). A third major nesting site, Little Pelican Island, Galveston Bay, is owned by the U.S. Army Corps of Engineers (Corps) (Yeargan 2007). Audubon, in

cooperation with the Corps, Texas Parks and Wildlife Department, and the Service, placed signs around Little Pelican Island advising the public to avoid landing on the island during the nesting season (Service 2007b, p. 3). Also in Galveston Bay, Evia and Midbay islands, owned by the Port of Houston, are important brown pelican nesting islands, and Alligator Point in Chocolate Bayou, owned by the Texas General Land Office, also supports breeding brown pelicans (Yeargan 2007). Brown pelicans are counted annually as part of the Texas Colonial Waterbird Survey (Service 2006, p. 1; Erfling 2007b). Signs advising the public to avoid landing were posted at each island listed above; the sign at Alligator Point was lost due to erosion, but there are plans to replace the sign this year (Erfling 2007b).

Louisiana's North Island and Breton Island, two pelican nesting islands within the Chandeleur Islands chain, are part of the Service's Breton National Wildlife Refuge system (GulfBase 2007, p. 1). Signs are posted at the edge of the water indicating that the site is closed to human intrusion during the nesting season. In addition, during the nesting season, law enforcement personnel patrol the islands during periods of high human presence, such as on weekends and holidays (Fuller 2007c). One of Louisiana's largest pelican nesting colonies, Raccoon Island, in addition to Wine Island, East Island, Trinity Island, and Whiskey Island, are part of the Isles Dernieres Barrier Islands Refuge owned and managed by the LDWF who restricts public access (Fuller 2007d). Additionally, there are several other small, intermittently used nesting colony sites, such as Martin and Brush islands, that are privately owned. However, these sites are remote and are probably only subject to occasional offshore recreational and commercial fishing activity.

West Indies. The two nesting sites documented by Collier *et al.* (2003, p. 113) on St. Maarten are protected: Fort Amsterdam as a registered and protected historic site, and Pelikan Key as part of a marine park. In addition, both sites have been proposed as Important Bird Areas (IBAs) (Society for the Conservation and Study of Caribbean Birds 2006, pp. 11–12).

In Puerto Rico and the U.S. Virgin Islands, most breeding colonies of brown pelicans are located within Commonwealth or Federal protected areas. Cayo Conejo, on the south coast of Vieques Island, Puerto Rico, is one of the two most active and largest brown pelican nesting colonies in Puerto Rico (Saliva 2003). The U.S. Navy began using the eastern portion of Vieques Island for training exercises in the early years of World War II, and acquired the eastern and western portions of the island between 1941 and 1943 (Schreiber 1999, pp. 8, 13, 18–21). Since that time, it has been used in varying intensities for activities including amphibious landings, naval gunfire support, and air-to-ground training (Service 2001, p. 4). In May 2003, the Navy ceased operations on Vieques Island via the Floyd D. Spense Defense Authorization Act of 2001 and transferred these lands to the Service, which subsequently designated it as the Vieques Island National Wildlife Refuge.

In the U.S. Virgin Islands, brown pelican colonies are fairly inaccessible on high cliffs or steep cays (small, low islands) (Collazo 1985, pp. 106–108; Saliva 1996b); therefore, it is unlikely that human intrusion would be a major factor affecting pelican reproduction in those colonies.

The six nesting sites in Cuba identified by Acosta-Cruz and Mugica-Valdés (2006, pp. 32–33) are within areas identified as wetlands of international importance under the Convention on Wetlands of International Importance especially as Waterfowl Habitat. The convention itself does not provide specific protections of identified wetlands, but does commit the parties to the convention to formulate and implement planning for the conservation and management of wetlands within their countries. One of the brown pelican sites in Cuba, Refugio de Fauna Río Máximo, is additionally protected as a wildlife refuge (Acosta-Cruz and Mugica-Valdés 2006, pp. 32–33).

California and Pacific Coast of Mexico. Pelican nesting colonies in California occur within Channel Islands National Park and are protected from human disturbance and coastal development. West Anacapa Island, where approximately 75 percent of the SCB population nests (Gress *et al.* 2003, p. 15), is designated as a research natural area by Channel Islands National Park and closed to the public (NPS 2004, p. 4). To protect pelican nesting areas, Santa Barbara Island trails are seasonally closed (NPS 2006, p. 1), and Scorpion Rock is permanently closed to the public (NPS 2004, p. 2). In 1980, the waters adjacent to the Channel Islands were designated as a National Marine Sanctuary (15 CFR 922). This designation implements restrictions which include, but are not limited to, (1) no tankers and other bulk carriers and barges, or any vessel engaged in the servicing of offshore installations within 1.8 kilometers (km) (1.15 miles (mi)); (2) no motorized aircraft at altitudes less than 305 m (1,000 ft) over the waters within 1.8 km (1.15 mi); and (3) no exploring for, developing, or producing oil and gas unless authorized prior to 1981 (NOAA 2006, Appendix C).

Additionally, the California Department of Fish and Game (CDFG) designated the waters adjacent to nesting brown pelican habitat on West Anacapa as a Marine Reserve, increasing protections for that colony by prohibiting fishing and other boating activities at depths of less than 37 m (120 ft) from January 1 to October 31 of each year (California Code of Regulations, Title 14, Sections 27.82, 630, and 6321). In 1999, commercial squid fishing boats operating offshore of West Anacapa and Santa Barbara islands during the pelican breeding season, presumably because the (non-local) fishermen were not aware of the closure during the breeding season, used bright lights at night to attract squid to the surface (Gress 1999, p. 1). Use of lights at night was associated with brown pelican nest abandonment, chick mortality, and very low productivity (Gress 1999, pp. 1–2). Squid fishing has been observed around the Channel Islands in recent years, although it has not occurred near the colonies at a noticeable level since 1999 (Whitworth *et al.* 2005, p. 19). In 2004, the California Fish and Game Commission adopted the requirement of light shields and a limit of 30,000 watts per boat operating around the Channel Islands (CDFG Regulations, Section 149, Title 14, CCR). Although occasional disturbances may occur during the breeding season, such as illegal boating within the Marine Sanctuary, we believe the protections and active enforcement by the National Park Service (NPS) and CDFG have ensured that all nesting colonies in California remain relatively disturbance free.

As noted above, Mexico's nesting brown pelicans are monitored annually as an indicator species in the Gulf of California (Godinez *et al.* 2004, p. 48). All of the island nesting colonies and many of the mainland Mexico nesting colonies are protected from habitat destruction or modification by Mexican law because the sites are federally protected and designated as either Biosphere Reserve Areas for Protection of Flora and Fauna or National Parks (Anderson and Palacios 2005, p. 16; Carabias-Lilio *et al.* 2000, p. 3).

Caribbean Coast of Mexico, and Central and South America. Isla Contoy Reserva Especial de la Biosfera off the coast of Cancun, Quintana Roo, Mexico, is Mexico's largest brown pelican nesting colony on the Caribbean coast.

It is currently protected as a National Park within a Biosphere Reserve. Visitation is limited and strictly controlled to minimize impacts to the seabirds that nest and roost there.

Guatemala—Eisermann (2006, p. 63) identified 12 sites where brown pelicans are present within Guatemala, but did not indicate whether any of these are nesting sites. Of these 12 sites, 10 have some level of conservation as either Wildlife Refuges, National Parks, Areas of Multiple Use, or private protected areas (Eisermann 2006, p. 13).

Honduras—In Honduras, two of the four identified nesting sites for brown pelicans are currently protected, Monumento Natural Marino del Archipiélago de Cayos Cochinos and Laguna de Los Micos within Parque Nacional Blanca Jeannette Kawas (Thorn *et al.* 2006, p. 8, 11, 29). A third nesting area, the cays of Isla Utila, has been proposed for protection as Refugio de Vida Silvestre Cayos de Utila and Reserva Marina Utila (Thorn *et al.* 2006, p. 9).

Nicaragua—Although Zolotoff-Pallais and Lezama (2006, p. 79) do not indicate any nesting sites for brown pelicans, they indicate that brown pelicans occur at four sites designated as wetlands of international importance under the Convention on Wetlands of International Importance especially as Waterfowl Habitat.

Costa Rica—In Costa Rica, the three major brown pelican nesting sites reported by Quesada (2006, p. 34), Isla Guayabo, Isla Negrita, and Isla Pararos, are protected as Biological Reserves. A fourth site, Isla Verde, identified as a roosting location for brown pelicans, is protected as a national park (Quesada 2006, p. 34).

Panama—Angehr (2005, pp. 23, 26, 30, 34) identifies four nesting sites used by brown pelicans in Panama that are on lands with some official protective status: (1) Isla Barca Quebrada, within Coiba National Park; (2) Iguana Island, within Isla Iguana Wildlife Refuge; (3) a group of small islands mostly within the Taboga Wildlife Refuge; and (4) Pearl Islands, owned by the Panamanian environmental organization ANCON (National Association for the Conservation of Nature). There are many more nesting areas in Panama, but they lack protective status.

Colombia—In Colombia, all seven sites where brown pelican were documented to occur by Moreno and Buelvas (2005, p. 11, 57) are included in a system of protected areas or as part of sanctuaries for wildlife and plants.

Venezuela—In Venezuela, Rodner (2006, p. 28) indicates that at least 9 of the 25 nesting colonies for brown pelicans are protected as either Parques Nacional, Monumentals Natural, or Refugios de Silvestre.

Ecuador—About 87 percent of the Galapagos Islands are a National Park (Exploring Ecuador 2006, p. 1), and commercial and tourist access to the Park is regulated by the government of Ecuador to protect natural resources (Service 2007a, p. 23). The resident human population on the Galapagos Islands has expanded in recent years, as has the number of tourists (Charles Darwin Foundation 2006, p. 13). The Charles Darwin Foundation, which works in the islands under an agreement with the government of Ecuador, has developed a strategic plan to address the management of increasing human presence in the islands (Charles Darwin Foundation 2006, p. 7). The plan's general objective is to ''forge a sustainable Galapagos society in which the people who inhabit the islands will act as agents of conservation.''

Peru—Proabons, an agency in Peru's Ministry of Agriculture, protects and manages brown pelican nesting islands, which are collectively referred to as guano islands (Zavalaga *et al.* 2002, p. 9; Proabonos 2006). Additionally, Franke (2006, p. 8) indicates brown pelicans occur at four protected sites, although it is not clear whether these are nesting sites as well: Santuario Nacional Los Manglares de Tumbes, Zona Reservada Los Pantanos de Villa, National Reserve Paracas, and Santuario Nacional Lagunas de Mejía. Estimated increases in the brown pelican population along coastal Peru have been attributed to protective measures by the Peruvian government. The Ministry of Agriculture's Forest and Wild Fauna Management Authority (IRENA) lists the brown pelican as endangered, and provides prohibitions against take of the species without a permit (Taura 2006).

Chile—Simeone and Bernal (2000, p. 450) reported that Isla Pájaro Niño in Chile has been designated a Nature Reserve by the Chilean government for the protection of Humboldt penguins, brown pelicans, and other seabirds. The breakwater connecting the island to the mainland has controlled access, which has reduced human disturbance (Simeone and Bernal 2000, p. 455).

In summary regarding nesting habitat, conservation efforts are continuing to positively affect nesting brown pelicans, resulting in an overall rangewide recovery. Although loss of nesting habitat has occurred on a local scale, for instance, in Puerto Rico (Collazo *et al.* 1998, p. 63) and Mexico (Anderson *et al.* 2003, p. 1099), we have no evidence that nesting habitat is limiting pelican populations on a regional or global scale. Threats from human disturbance of nesting colonies throughout most of the species' range have been abated through protection efforts, including designation of National Parks and Biosphere Reserves, signage to deter people from entering colonies, and restricted access. While nesting habitat is lost to storms and erosion, particularly in the Gulf of Mexico (McNease and Perry 1998, p. 9), birds have been found to disperse to and colonize other natural areas (Hess and Durham 2002, p. 7) and manmade islands (Hess and Linscombe 2006, pp. 3, 6; Harris 2006).

Roost Habitat

Disturbance-free roosting habitat is essential for brown pelicans throughout the year, for drying and maintaining plumage, resting, sleeping, and conserving energy (Jaques and Anderson 1987, pp. 4–5). Roosts also act as information centers for social facilitation. Essential characteristics of roost sites include: Proximity to food resources; physical barriers to minimize predation and disturbance; sufficient size for individuals to interact normally; and protection from adverse environmental conditions, such as wind and surf (Jaques and Anderson 1987, p. 5). Communal roosts occur on offshore rocks and islands; on beaches at mouths of estuaries; and on breakwaters, pilings, jetties, sandbars, and mangrove islets (Jaques and Anderson 1987, pp. 14, 19; Shields 2002, p. 7). Brown pelicans have two types of roosts, day and night roosts. Night roosts need to be larger and less accessible to predators and human disturbance than day roosts (Jaques and Anderson 1987, p. 27; Jaques and Strong 2003, p. 1). Along the Pacific Coast, brown pelicans use roost sites that are different from nest sites (Jaques and Anderson 1987, pp. 14, 19; Briggs *et al.* 1981, pp. 7–8). In other areas, brown pelicans generally also use their nesting grounds as roosting grounds year round (Saliva 2003; Hess and Durham 2002, p. 1; Hess and Linscombe 2001, p. 1; King *et al.* 1985, p. 204).

Natural roost habitat is limited along the southern California coast due to a lack of rocky substrate, as well as coastal development and wetland filling (Jaques and Strong 2003, p. 1). Most roosts in southern California occur on jetties and breakwaters under jurisdiction of the Corps, although private structures such as barges and oil platforms also provide significant roost habitat (Strong and Jaques 2003, p. 20). Night roost habitat is further limited to large areas where disturbance is minimal, which may be causing

pelicans to expend unnecessary energy to fly between daytime roosting/foraging areas along the mainland and distant night roosts in the Channel Islands (Jaques *et al.* 1996, p. 46; Jaques and Strong 2003, p. 12).

In California, all rocks, islands, pinnacles, and exposed reefs above mean high tide within 22.2 km (13.8 mi) of shore are included within the California Coastal National Monument (CCNM), managed by the U.S. Bureau of Land Management (U.S. Bureau of Land Management 2005, pp. 1–3). Management includes monitoring and protecting geologic formations and the habitat they provide for seabirds and other wildlife (U.S. Bureau of Land Management 2005, pp. 1–3). Many pelican roost sites are on protected rocks and islands within the CCNM.

The central California coast supports an important temporal component of pelican roosting habitat, supporting 69 to 75 percent of pelicans in California in the fall (Strong and Jaques 2003, p. 28). The Farallon Islands National Wildlife Refuge and Monterey Bay National Marine Sanctuary in central California protect and support roosting habitat (15 CFR 922; Thayer and Sydeman 2004, p. 2; Service 2007c, p. 1). CDFG designated the waters around the Farallon Islands as a State Marine Conservation Area, and the islands are part of the Gulf of the Farallons National Marine Sanctuary (CDFG 2007, p. 7; 15 CFR 922). The Marine Sanctuaries prohibit aircraft from flying below 305 m (1,000 ft) within their boundaries, and limit allowable uses to research, educational, and recreational activities. In general, commercial and recreational uses of marine resources are prohibited, but certain commercial and recreational harvests of marine resources may be permitted (CDFG 2007, pp. 4–5; 15 CFR 922).

Vandenberg Air Force Base (AFB), in southern California, consulted under section 7 of the Act with the Service regarding the effects of low-flying test flights, and agreed to avoid flying directly over roosting pelicans occurring on their mainland base (Service 2003a, p. 1). We have consulted with Vandenberg AFB multiple times regarding the impacts of missile launches on roosting pelicans and have determined that impacts are limited to a short-term startle effect (Service 1998, 1999, 2003a). For the next 5 years, a maximum of 25 missile launches per year at Vandenberg AFB are estimated (Frye 2006). Therefore, potential impacts from missile launches are minimal because they are temporary in nature and will likely only occur a few times per month.

The Sonny Bono Salton Sea National Wildlife Refuge, inland from San Diego, is also used for roosting during the post-breeding season, supporting and protecting up to 5,000 pelicans in the summer within its boundaries (Service 2007d, pp. 1–2). However, roosting habitat is expected to decrease after the year 2018 as a result of reductions of Colorado River water reaching the Salton Sea (Service 2002, p. 52), which could decrease the availability of forage fishes to pelicans and reduce the suitability of roosting habitat in this area (Service 2002, pp. 18, 51). The Bureau of Reclamation will compensate for this loss by creating new roosting habitat along the southern California coast (Service 2002, p. 52).

An atlas of pelican roost sites along the central and southern California coast is in preparation that will allow conservation agencies to evaluate the overall status of roosting habitat and help prioritize roost sites for protection (Gorbics *et al.* 2004, p. 1). In addition, the following projects will benefit brown pelicans, regardless of the brown pelican listing status: American Trader Restoration Plan (ATTC), Command Oil Spill Restoration Plan, Torch/Platform Irene Restoration Plan, and Montrose Settlement Restoration Plan (MSRP). The purpose of these plans is to restore natural resources, including seabirds, that were injured as a result of oil spills and hazardous substance releases along the California coast, and one component of all these plans is to reduce human disturbance at roost sites in central and southern California through education, monitoring, and enforcement (ATTC 2001, p. 16; Command Oil Spill Trustee Council 2004, p. 60; Torch/Platform Irene Trustee Council 2006, p. 33; MSRP 2005, p. D6–1). ATTC also began a pilot program in 2004 to create new night roosting habitat in the form of a floating platform in the San Diego Bay National Wildlife Refuge salt ponds. While pelicans have not used the platform yet, ATTC is exploring other sites to enhance or create new roosts in southern California (ATTC 2006, p. 1). If the platform is successful, the MSRP may duplicate this effort in additional locations.

While some roosting habitat in the United Sates may still be susceptible to human disturbance, much of the brown pelican roosting habitat occurs within protected areas. There are ongoing efforts to identify and prioritize important roost sites, reduce disturbances at these sites, enhance existing roosts, and create new roost habitat. Southern California is the only area we are aware of with potentially limited roost sites. Nevertheless, the limited number of existing roost sites has had no known impacts to the species and the population appears to be stable or increasing. Therefore, we do not believe that roost site disturbance will endanger the brown pelican throughout all of its range in the foreseeable future.

Prey Abundance

Brown pelicans feed on surface-schooling fish such as menhaden (*Brevoortia* spp.), mullet (*Mugil* spp.), and anchovies (*Engraulis* spp.), which they catch by plunge-diving in coastal waters (Palmer 1962, p. 279; Blus *et al.* 1979b, p. 175; Gress *et al.* 1990, p. 2; Schreiber *et al.* 1975, p. 649; Schreiber 1980, p. 744; Kushlan and Frohring 1985, p. 92). The offshore area within 30 to 50 km (18 to 30 mi) of a colony during the breeding season is critical to pelicans for feeding young (Anderson *et al.* 1982, p. 28). Additionally, reproductive success is dependent on abundance and availability of prey within foraging distance of the colony (Anderson *et al.* 1982, pp. 23, 30; Everett and Anderson 1991, p. 133). Therefore, commercial harvests of pelican prey species have the potential to affect brown pelican population dynamics.

Commercial fishing. The Magnuson-Stevens Fishery Conservation and Management Act of 1976 (16 U.S.C. 1801 *et seq.*) requires management plans for commercial fish species to ensure optimum yield with guaranteed perpetuation of that resource and minimal impact to the ecosystem of which it is a part. Each coastal region of the U.S. is a member of one of eight Fishery Management Councils, each of which implements the local fishery management plan (16 U.S.C. 1801 *et seq.*).

The Pacific Fishery Management Council prepared the Anchovy Fishery Management Plan (AFMP). Amendment 8 to the AFMP, adopted December 15, 1999 (64 FR 240), changed the name of the AFMP to the CPSFMP and added Pacific sardine (*Sardinops sagax*), Pacific mackerel (*Scomber japonicus*), jack mackerel (*Trachurus symmetricus*), and market squid (*Loligo opalscens*) to the fishery management unit (CPSFMP 1998, p. 1–1). Amendment 8 divided these species into actively managed and monitored categories. Harvest guidelines for actively managed species, Pacific sardine and Pacific mackerel, are based on formulas applied to current biomass estimates and designed to ensure that adequate forage is available for seabirds, marine mammals, and other fish. There are no harvest guidelines for the monitored species

(northern anchovy, jack mackerel, and market squid) because they are not currently intensively fished, although harvest and abundance data will be monitored (CPSFMP 1998, pp. 4–5). The northern anchovy fishery essentially ceased in 1983 due to a depressed market. The depressed market for northern anchovy is thought to be a long-term or possibly permanent condition, although this fishery continues today at a minimal level (CDFG 2001, pp. 303–305). A comprehensive assessment of the northern anchovy fishery will be conducted if the annual harvest approaches 25,000 metric tons (mt) (25,097 tons); however, the current harvest is only about 7,000 mt (6,889 tons) of an estimated biomass of 388,000 mt (381,872 tons) (Service 1999, pp. 1–2).

On June 10, 1999, the Service determined that Amendment 8 to the AFMP will not adversely affect brown pelicans in California because it would not decrease the availability of fish to pelicans (Service 1999, p. 1). The CPSFMP (1998, pp. 2–5) will continue to ensure that adequate forage is available to pelicans if economic conditions change and northern anchovies become more intensively fished. The CPFSMP will also ensure that other forage fishes used by pelicans, such as Pacific sardines and Pacific mackerel, are also managed to preserve adequate forage reserves (CPSFMP 1998, pp. 2–5).

The central subpopulation of the northern anchovy extends south of the U.S. border along the west coast of Baja California, Mexico. However, there is no bilateral agreement between the U.S. and Mexico regarding the management of this subpopulation, and the Mexican fishery is managed independently and not restricted by a quota (CDFG 2001, p. 304). The Coronados Islands pelican population may have suffered reduced breeding success during the late 1970s as a result of intensive commercial anchovy harvests in Mexico (Anderson and Gress 1982, p. 130). Declines in the anchovy population in the early 1980s may have been caused by intensive harvesting in Mexico that far exceeded the California fishery (Service 1983, p. 57). Similar to the U.S. fishery, anchovy harvests in Mexico have decreased sharply in recent years, from an average 86,363 mt (85,000 tons) per year from 1962 to 1989, to an average of 3.65 mt (3.6 tons) from 1990 to 1999 (CDFG 2001, p. 303). However, if economic conditions change and anchovies become more intensively harvested in Mexico, availability of anchovies for pelicans could be reduced.

While no brown pelican prey species appear to be currently regulated by the Gulf of Mexico Fishery Management Council nor the Caribbean Fishery Management Council (Web sites accessed: *http://www.gulfcouncil.org/,* and *http://www.caribbeanfmc.com/*), in the U.S., regulations under authority of the Magnuson-Stevens Fishery Conservation and Management Act are sufficient to protect prey abundance for brown pelicans, including brown pelican food species currently being commercially fished and any that may be in the future. Therefore, we do not believe that commercial fishing will endanger the brown pelican or its prey throughout the United States, Mexico, and Caribbean portion of its range in the foreseeable future.

We do not have information from other countries on commercial fishery impacts to brown pelican prey abundance. However, we have no evidence to suggest that commercial fishing is limiting brown pelican populations. Populations of brown pelicans in Central and South America are generally large with stable or increasing trends, indicating that food resources are not limiting.

El Niño and Freeze Events. A mixture of subarctic and tropical waters, upwelling events, and varying depths of the Pacific Ocean result in seasonal, interannual (between year), and long-term variability in fish availability for brown pelicans (Dailey *et al.* 1993, pp. 11–13). El Niño events that occur periodically in the Pacific Ocean are characterized by warm, nutrient-poor water and reduced productivity (Dailey *et al.* 1993, p. 11; Leck 1973, p. 357; Duffy 1983b, p. 687), thus reducing brown pelican reproductive success and causing mortality in pelican chicks (Hayward 2000, p. 111). Pelicans have the flexibility to respond to changes in food supplies through variable reproductive rates, although a long-term decline in food abundance could have serious impacts on the pelican population (Anderson *et al.* 1982, p. 30). An incidental effect of El Niño is movement of brown pelicans into developed areas, presumably in search of food, exposing them to collision hazards with structures and vehicles (Leck 1973, p. 357). During the 1997 El Niño event, an increase was reported in the local pelican population from 200 to 4,000 birds within a few weeks within the city of Arica, Chile (CNN 1997, p. 1). El Niño events are generally limited to a single breeding season, and are not likely to result in long-term population declines (Dailey *et al.* 1993, p. 11).

McNease *et al.* (1994, p. 10) found that severe freezes in Louisiana limited feeding due to surface ice formation. Fish mortality related to freezes also negatively impacts the pelican's food supply on a short-term basis (McNease *et al.* 1994, p. 10). However, these events are typically localized and restricted to a single season in duration.

El Niños and severe freezes may impact brown pelicans on a short-term, localized basis, but they do not pose a rangewide threat to the continued existence of the species. The pelican is a long-lived species that has evolved with natural phenomena such as variation in food resources, winter storms, and hurricanes, such that sporadic breeding failures have little effect on long-term population stability (Shields 2002, p. 23). These factors are only significant when population sizes are small and reproduction is limited. Because current populations and distribution are large and reproduction has been restored to a level that can compensate for normal environmental fluctuations, we do not believe these natural events threaten the species throughout all of its range in the foreseeable future.

Other Habitat Protections

U.S. laws that provide protections to brown pelican habitat are the Fish and Wildlife Coordination Act (16 U.S.C. 661 *et seq.*), which requires equal consideration and coordination of wildlife conservation with other water resource developments, and the Estuary Protection Act (16 U.S.C. 1221 *et seq.*), which requires Federal agencies to assess impacts of commercial and industrial developments on estuaries. Section 10 of the Rivers and Harbors Act (33 U.S.C. 401 *et seq.*) regulates the building of any wharfs, piers, jetties, and other structures and the excavation or fill within navigable water. Sections 402 and 404 of the Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*), as amended by the Clean Water Act (91 Stat. 1566) and the Water Quality Improvement Act (101 Stat. 7), provide for the development of comprehensive programs for water pollution control and efficient and coordinated action to minimize damage from oil discharges.

Additional environmental laws that help protect pelican habitat and food sources include: Emergency Wetlands Resources Act of 1986 (100 Stat. 3585), which authorizes the purchase of wetlands from Land & Water Conservation Fund monies; North American Wetlands Conservation Act of 1989 (103 Stat. 1968) which provides funding for wetland conservation

programs in Canada, Mexico, and the United States; Anadromous Fish Conservation Act of 1965 (79 Stat. 1125), which provides funds for conservation, development, and enhancement of anadromous fish (marine fish that breed in fresh water) through cooperation with States and other non-Federal interests; Coastal Barrier Resources Act (96 Stat. 1653), as amended by the Coastal Barrier Improvement Act of 1990, which encourages conservation of hurricane-prone, biologically rich coastal barrier islands by restricting Federal expenditures that encourage development of coastal barrier islands, such as providing National Flood Insurance; Coastal Zone Management Act of 1972 (16 U.S.C. 1451–1464), which provides fiscal incentives for the protection, restoration, or enhancement of existing coastal wetlands or creating new coastal wetlands and assessing the cumulative effects of coastal development of coastal wetlands and fishery resources; Shore Protection Act of 1988; Outer Continental Shelf Lands Act of 1954, as amended in 1978 and 1985; National Ocean Pollution Planning Act of 1978; Oil Pollution Act of 1990; Act to Prevent Pollution From Ships of 1980; Marine Pollution and Research and Control Act of 1989; Ocean Dumping Ban Act of 1988; and Marine Protection, Research, and Sanctuaries Act of 1988. These laws and regulations, taken collectively, help ensure the conservation of brown pelicans and their habitat.

In summary, conservation efforts are continuing to positively affect brown pelicans, resulting in an overall rangewide recovery. Although loss of nesting habitat has occurred on a local scale, for instance in Puerto Rico (Collazo *et al.* 1998, p.63) and Mexico (Anderson *et al.* 2003, p. 1099), we have no evidence that nesting habitat loss is limiting pelican populations on a regional or global scale. Threats from human disturbance of nesting colonies throughout most of the species' range have been abated through protection efforts, including designation of National Parks and Biosphere Reserves, signage to deter people from entering colonies, and restricted access. While nesting habitat is lost to storms and erosion, particularly in the Gulf of Mexico (McNease and Perry 1998, p. 9), birds have been found to colonize in other natural areas (Hess and Durham 2002, p. 7) and on manmade islands (Hess and Linscombe 2006, pp. 3, 6; Harris 2006). The only area where we have determined roost sites to be limited is in southern California, but this has not had any known impacts to the population. Much of the U.S. brown pelican roosting habitat is within protected areas. We have no evidence to suggest that commercial fishing in the U.S. and elsewhere is limiting brown pelican populations by reducing the species' fish prey base. El Niños and severe freezes may impact brown pelicans on a short-term, localized basis, but these events do not threaten the continued existence of the species. Although some local factors continue to affect brown pelicans, these factors are not of sufficient magnitude to affect any brown pelican populations. Therefore, we believe that the brown pelican is not threatened or endangered throughout all of its range within the foreseeable future by the present or threatened destruction, modification, or curtailment of its habitat or range.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

We are not aware of any overutilization for commercial, recreational, scientific, or educational uses of brown pelicans, although within the United States, Canada, and Mexico, the brown pelican is protected from any such threats. In 1936 the Protection of Migratory Birds and Game Mammals Treaty was signed by the United States, Canada, Japan, Russia, and Mexico (50 Stat. 1311; TS 912), which adopted a system for the protection of certain migratory birds, including the brown pelican, in the United States and Mexico. This Treaty provides for protection from shooting and egg collection by establishment of closed seasons and refuge zones. Implementation of the treaty in the United States was accomplished by amending the Migratory Bird Treaty Act (MBTA) of 1918 (16 U.S.C. 703–711; 40 Stat. 755). The MBTA and its implementing regulations (50 CFR Parts 20 and 21) prohibit take, possession, import, export, transport, selling, purchase, barter, or offering for sale, purchase, or barter, any migratory bird, their eggs, parts, and nests, except as authorized under a valid permit, and require that such use not adversely affect populations (50 CFR 21.11). The MBTA and its implementing regulations will adequately protect against overutilization of pelicans within the United States, Canada, and Mexico (see discussion of the MBTA in ''Effects of this Rule'' section below). We do not have any information to indicate that overutilization for commercial, recreational, scientific, or educational uses is occurring within areas covered by the MBTA or elsewhere throughout the species' range. Therefore, we do not believe overutilization will endanger the brown pelican throughout all of its range in the foreseeable future.

C. Disease or predation

Several diseases have been identified as causing illness and mortality of brown pelicans. The diatom (an algae) *Pseudo-nitzchia australis* occasionally blooms in large numbers off the California coast and produces the toxin domoic acid that occasionally causes mortalities in pelicans (USGS 2002a, p. 5). Erysipelas, caused by the bacterium *Erysipelothrix rhusiopathiae*, caused mortality of about 350 pelicans off the coast of California during the winter of 1987–1988 (Shields 2002, p. 32). This outbreak was thought to have been caused by unusually warm waters combined with a large number of pelicans in that area. Avian botulism, caused by the bacterium *Clostridium botulinum*, has caused illness and mortality of pelicans at the Sonny Bono Salton Sea National Wildlife Refuge (USGS 2002b, p. 6). None of these disease outbreaks have had known long-term impacts on the population, and because occurrences are few and self-limiting, we do not believe impacts from disease will become a threat to brown pelicans throughout all of their range in the foreseeable future.

West Nile virus is listed on the Center for Disease Control's West Nile Virus Web page as causing the mortality of white pelicans. However, according to this same Web site and the USGS, no brown pelican deaths due to West Nile virus have been reported, although antibodies for the virus have been found in captive brown pelicans (USGS 2003a, p. 6). We do not believe impacts from West Nile virus will become a threat to brown pelicans throughout all of their range in the foreseeable future, since there is no evidence to date that it negatively impacts pelicans. The post-delisting monitoring plan will be designed to detect declines in brown pelican populations that might arise from a variety of threats, including West Nile virus. There is an extensive network of Federal and State wildlife agencies and other cooperators that monitor colonial nesting waterbird species, including the brown pelican (see ''Post-Delisting Monitoring Plan'' section below).

Ticks have been implicated as the cause of nest abandonment on both a Texas and Peruvian island (King *et al.* 1977b, p.1; Duffy 1983a, p. 112). However, these events were localized and apparently have had no long term impact on population levels in these areas. Mites and liver flukes have also

been reported in brown pelicans (50 FR 4942), but have not been noted to cause significant health impairment in healthy birds. We have no evidence that mites, liver flukes, or other parasites are limiting brown pelican populations. Therefore, we do not believe impacts from parasites will become a threat to brown pelicans throughout all of their range in the foreseeable future.

Brown pelicans require nesting areas in close proximity to food supplies and free from mammalian predators and human disturbance (Anderson and Keith 1980, p. 65). There is no known significant impact from mammalian predation on brown pelicans, particularly since they generally nest at sites free of mammals that could depredate eggs or young. Mammalian predators introduced to seabird nesting islands, such as domestic cats (*Felis catus*) and rats (*Rattus* spp.), can have serious impacts on small and medium-sized seabirds, but they appear to have little impact on pelicans (Anderson *et al.* 1989, p. 102).

There are numerous reported avian predators of chicks and eggs: magnificent frigatebirds (*Fregata magnificens*), gulls (*Larus* spp.), red-tailed hawks (*Buteo jamaicensis*), peregrine falcons (*Falco peregrinus*), American kestrels (*Falco sparverius*), short-eared owls (*Asio flammeus*), cattle egrets (*Bulbulcus ibis*), night herons (*Nycticorax spp.*), American oystercatchers (*Haematopus palliatus*), crows (*Corvus* spp.), and mockingbirds (*Mimus gilvus*) (Schreiber 1979, p 40; Saliva and Burger 1989, p. 695; Jiminez 2004, pp. 16–17). Avian predators occasionally destroy unguarded pelican nests, and disturbances to nesting colonies may flush pelicans from nests, increasing the risk of predation on eggs and young (Schreiber and Riseborough 1972, p. 126). However, if brown pelicans are undisturbed, at least one member of the breeding pair usually remains close to the nest to protect the eggs and vulnerable nestlings (Duffy 1983a, p. 113; Schreiber and Riseborough 1972, p. 126; Shields 2002, p. 12). In the absence of other disturbances, egg and nest predation by mammals and other birds does not appear to impose a significant limitation on brown pelican reproduction. Therefore, we do not believe impacts from mammalian or avian predation will become a threat to brown pelicans throughout all of their range within the foreseeable future.

Disease and predation generally affect only small numbers of individuals. In addition, many disease events are usually limited in area and may only affect brown pelicans for a short period of time (e.g., for a single breeding season). Because brown pelicans are long lived, sporadic breeding failures that may be caused by parasites, disease, or predation, especially on a local scale, have little effect on long-term population stability (Shields 2002, p. 23). Because current populations and distribution are large and reproduction has been restored to a level that can compensate for normal environmental fluctuations, we do not believe that disease, parasites, and predation threaten the species throughout all of its range in the foreseeable future.

D. The Inadequacy of Existing Regulatory Mechanisms

As discussed in each of the factors, many regulatory mechanisms will remain in place after delisting that ensure future threats will be reduced or minimized. Another Federal law not cited under the other factors that will continue to offer some form of protection for the brown pelican is the Lacey Act which helps the United States and other foreign countries enforce their wildlife conservation laws, including the protections afforded brown pelicans under MBTA. In addition to these laws that provide direct protection to the brown pelicans, the Clean Water Act and the Federal Insecticide, Fungicide, and Rodenticide Act of 1996 (FIFRA; 7 U.S.C. 136 *et seq.*) provide regulations indirectly through contamination prevention, which contributes to habitat protections. We believe these protections, taken together, provide adequate regulatory mechanisms to prevent the brown pelican from becoming endangered throughout all of its range in the foreseeable future.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Natural Factors

This discussion addresses direct mortality of brown pelicans. See Factor A for impacts to habitat from natural weather events such as storms and El Niño. Boersma (1978, p. 1482) reported El Niño-season starvation of nestling brown pelicans in the Galapagos Islands. The 1982–83, 1986–87, and 1991–1994 El Niño events may have reduced the number of nesting brown pelicans in those years at Cayo Conejo, Puerto Rico (Schreiber 1999, p. 12). In extreme cases adult mortality has resulted from El Niño events (Shields 2002, p. 32), for example, during the especially severe El Niño (Southern Oscillation) of 1983 (Duffy 1986, p. 591). Mortality was not noted during the less-severe event of 1978 (Boersma 1978, p. 1482). Shields (2002, p. 23, and reference cited within) states that food shortages as a result of El Niño and other climatic and oceanographic events may result in abandonment of nests and starvation of nestlings, but rarely results in adult mortality except in extreme events. Because brown pelicans are long lived, such short-term breeding failures have little impact on long-term population viability.

Storms accompanied by severe tidal flooding can have a significant negative effect on brown pelican productivity (McNease *et al.* 1994, p. 10). While some adults may be killed during storm events, most impacts result in juvenile mortality and reduced fledgling production (Wilkinson *et al.* 1994, p. 425; Hess and Linscombe 2006, p. 4). Additionally, eggs and nestlings may be lost due to flooding (Hess and Linscombe 2006, p. 23) and nests built in trees are easily dislodged and destroyed during strong winds or major storms (Jiminez 2004, pp. 12–17; Saliva 1989). While McNease *et al.*'s (1994, p. 10) observations indicated a female that has produced eggs or nestlings will not nest again in the same season, Hess and Linscombe (2006, pp. 3, 7, 23) found pelicans rebuilding new nests on top of flooded and damaged nests.

In addition to freezes in Louisiana limiting brown pelican foraging and resulting in fish mortality, as discussed above under Factor A, McNease *et al.* (1994, p. 10) found effects from severe freezes included high initial brown pelican mortality from hypothermia, prolonged exposure to low temperatures, and death while plunge-diving into ice-covered water. However, severe freeze events are infrequent (McNease *et al.* 1994, p. 10) and have not precluded the Louisiana population from growing to large numbers since the restocking program began in the 1960s.

These natural factors may adversely affect brown pelicans on a short-term, localized basis, but do not pose a rangewide threat to the continued existence of the species. These factors generally affect only a small number of individuals, affect only a localized area, or affect reproductive success for a single season. The pelican is a long-lived species that has evolved with natural phenomena such as variation in food resources, winter storms, and hurricanes. These factors are only significant when population sizes are small and reproduction is limited. Because current populations and distribution are large and reproduction has been restored to a level that can compensate for normal environmental fluctuations, we do not believe that natural events will endanger the species

throughout all of its range in the foreseeable future.

Manmade Factors

Pesticides and Contaminants. During initial recovery planning for brown pelicans, it was recognized that organochlorine pesticides were the major threat to the brown pelican in the United States and these pesticides acted by direct toxicity (affecting all age classes) and by impairing reproduction (reducing recruitment into the population) (Hickey and Anderson 1968, p. 272; Risebrough *et al.* 1971, pp. 8–9; Blus *et al.* 1979b, p. 183). Impairment of reproduction was attributed to a physiological response to the presence of high levels of the organochlorine dichlorodiphenyldichloroethylene (DDE) (Hickey and Anderson 1968, p. 272). DDE is the principal metabolite of DDT, a synthetic organochlorine compound that was widely used as a commercial and agricultural pesticide from the 1950s through the early 1970s (Risebrough 1986, p. 401; 37 FR 13369). Brown pelicans gradually accumulated these toxins by eating contaminated prey (Hickey and Anderson 1968, p. 271). DDE interferes with calcium deposition during eggshell formation, resulting in the production of thin-shelled eggs that are easily crushed during incubation (Gress 1995, p. 10). DDE also causes the death of embryos in the egg, and the death or aberrant behavior of recently hatched young (Blus 1982, p. 26). The primary reason for severe declines in the brown pelican population in the United States, and for designating the species as endangered, was DDT contamination in the 1960s and early 1970s.

In California, ocean sediments off the coast of Los Angeles were heavily contaminated with DDT residues from a DDT manufacturing facility that discharged waste into the sewage system, which entered the marine environment through a submarine outfall (Gress 1995, p. 10). This input ceased in 1970, after which DDT and DDE residues in the marine environment decreased sharply, and pelican reproductive success improved as eggshell thickness increased (Gress 1995, p. 10; Gress and Lewis 1988, p. 13). Reproductive declines are thought to occur when pelican eggshells average 15 to 20 percent thinner than normal (Gress 1994, p. 7). Mean eggshell thickness from 1986 to 1990 was only 4.6 percent thinner than the pre-1947 mean, a level which may contribute to lowered fledging rates in some birds, but is no longer causing population-wide reproductive impairment in brown pelicans (Gress 1995, p. 92).

DDE was also found to be detrimental to the reproductive success of brown pelicans in both Texas and Louisiana (King *et al.* 1977a, p. 423) and was the direct cause of brown pelican deaths in Louisiana (Holm *et al.* 2003, p. 431). Since banning of the use of DDT, levels of DDE residues have declined. The level of DDE residues in eggs collected in Texas from 1975 to 1981 was about one half the level found in eggs collected in 1970 (King *et al.* 1985, p. 205; King *et al.* 1977a, p. 423).

In 1997, Mexico introduced a plan to strictly curtail and then phase out use of DDT by 2007 (Environmental Health Perspectives 1997, p. 1). Mexico used DDT for control of malaria until 1999 (Salazar-García *et al.* 2004, p. 542), and then eliminated its use by 2000, several years ahead of schedule (Gonzalez 2005, p. 1). Recent contaminants studies in the Gulf of California, Mexico, indicate that this area remains one of the least contaminated with persistent organic pollutants in western North America (Anderson and Palacios 2005, p. 8).

Eggs were collected during the periods 1980 to 1982 and 1992 to 1993 in Puerto Rico and the U.S. Virgin Islands (Collazo *et al.* 1998, pp. 62–63). Concentrations of DDE and PCBs were significantly higher in the Puerto Rico eggs than the U.S. Virgin Island eggs collected in the 1980s. However, Collazo *et al.* (1998, p. 64) state that brown pelican reproduction has not been affected by contaminants in Puerto Rico and the U.S. Virgin Islands at least since the 1980s. Additionally, contaminant concentrations in the eggs collected in the 1990s were significantly lower than those collected in the 1980s (USGS 2002b, p. 5).

The Environmental Protection Agency (EPA) banned the use of DDT in the U.S. in 1972 (37 FR 13369), and Canada's National Office of Pollution Prevention banned its use in 1985 (Canada Gazette 2005, p. 1). The Stockholm Convention on Persistent Organic Pollutants (*http://www.pops.int/*) eliminated or reduced the use of 12 persistent organic pollutants, including DDT, in all participating countries in 2001. All countries within the breeding range of the brown pelican are participants. In addition to the United States and Canada, Cuba and Costa Rica have banned its use; Belize, Columbia, Mexico, and Venezuela have restricted its use; and eight countries limited access in other ways (*http://www.pesticideinfo.org*). Although low-level DDE contamination will probably persist for many years in areas where DDT was used, the impact to pelican populations is now believed to be negligible and is expected to continue to lessen over time. Because regulatory mechanisms are in place to ban or strictly limit use of DDT, and current levels of DDE contamination are no longer causing population-wide reproductive impairment in brown pelicans, DDT or DDE will not endanger the brown pelican throughout all of its range within the foreseeable future.

A number of other organochlorine pesticides have also been documented to have affected brown pelicans in some portions of their range. The organochlorine pesticide endrin is the probable cause of the brown pelican's rapid decline and subsequent disappearance in Louisiana (King *et al.* 1977a, p. 427). Endrin was first used in the Mississippi River Basin in 1952. In 1958, dead fish were reported near sugarcane fields where endrin was used, and die-offs of fish and other wildlife began to consistently occur when heavy rains produced runoffs from those fields (King *et al.* 1977a, p. 427). King *et al.* (1977a, p. 427) reported an estimated six million menhaden found dead between 1960 and 1963. Extensive fish kills persisted in the lower Mississippi River and other streams in sugarcane growing parishes of Louisiana through 1964 (King *et al.* 1977a, p. 427). It was concluded that endrin from both agricultural and industrial sources was responsible for the fish kills (King *et al.* 1977a, p. 427). Fish-eating ducks, such as mergansers, were also reported floating dead in streams and bayous (King *et al.* 1977a, p. 427).

According to Winn (1975, p. 127) the adverse impact of endrin on brown pelicans was demonstrated when more than 300 of the 465 birds introduced to Louisiana since 1968 died during April and May 1975. Brain tissue from five dead pelicans was analyzed. Chemists at Louisiana State University identified seven pesticides in the brain tissue, all chlorinated hydrocarbons widely used in agriculture. Most of the birds analyzed contained what experts regard as potentially lethal levels of endrin. In addition to endrin, residues of six other organochlorine pesticides (DDE, dieldrin, toxaphene, benzene hexachloride, hexachloro-benzene (HCB), and heptachlor epoxide) were found (Winn 1975, p. 127). This significant die-off demonstrated the vulnerability of brown pelicans to endrin and emphasized the possible role of pesticides in the brown pelican's decline in the eastern United States. Endrin is also one of the pesticides targeted for elimination by the Stockholm Convention on Persistent Organic Pollutants (*http://*

www.pops.int/). Although it is not currently banned in the United States, it is not registered for use in the United States or Canada and is banned in Belize, Colombia, Cuba, and Peru (*http://www.pesticideinfo.org*).

Dieldrin (another organochlorine pesticide) was also detected at levels considered detrimental to reproductive success for brown pelicans in the eastern portion of the United States (Blus *et al.* 1974, p. 186; Blus *et al.* 1975, p. 653; Blus *et al.* 1979a, p. 132). There is only slight evidence that dieldrin thins eggshells, whereas there is strong evidence indicating that it adversely affects egg hatching, post-hatching survival, and behavior of young birds (Dahlgren and Linder 1974, pp. 329–330; Blus 1982, p. 27). The agricultural use of dieldrin in the U.S. ceased in 1970 and it was discontinued as a termite control in 1987 (Centers for Disease Control and Prevention 2005, p. 340). From 1975 through 1978, dieldrin residues collected from brown pelican eggs in Texas were found at levels that do not pose a threat to reproductive success and survival (King *et al.* 1985, p. 206).

Other organochlorine insecticides, including chlordane-related compounds, HCB, and toxaphene, were rarely detected in brown pelican eggs collected in Texas from 1975 to 1978 (King *et al.* 1985, p. 206). Polychlorinated biphenyls (PCBs) are chemicals that were used as coolants and lubricants in transformers, capacitors, and other electrical equipment. Due to concern over the toxicity and persistence of PCBs, they were banned in 1978 (43 FR 33918) under authority of the Toxic Substance Control Act of 1976 (15 U.S.C. 2601 *et seq.*). Concentrations of PCBs in brown pelican eggs collected in Texas declined more than eight-fold between 1970 and 1981 (King *et al.* 1985, p. 206), and are now at levels not believed to be detrimental.

Claims have been made that organochlorine pesticides are still used in South and Central America (NatureServe 2007, p. 2). However, we are not aware of any reports of pesticides affecting reproduction outside of the United States. Nearly every nation within the range of the brown pelican has signed the 2001 Stockholm Convention on Persistent Organic Pollutants (Resource Futures International 2001, p. 11). Signatories to the Convention agree to eliminate the production and use of DDT, endrin, dieldrin, chlordane, HCB, toxaphene, and PCBs, as well as other persistent organic pollutants, with an exemption for use of DDT for disease vector (an organism that transmits disease, such as mosquitoes) control in accordance with World Health Organization recommendations and guidelines and when alternatives are not available. Parties exercising this exemption are to periodically report their use (Resource Futures International 2001, p. 12). These reports are listed on the Convention's Web site: *http://www.pops.int/*. The evidence we have found indicates that reproduction in brown pelicans is no longer affected by the use of persistent organochlorine pesticides. Regulatory mechanisms are currently in place to eliminate or severely restrict their use such that they do not threaten the brown pelican throughout all of its range within the foreseeable future.

While effects from other environmental contaminants were not thoroughly known in the 1970s and 1980s, there were indications that some localized contaminant-related problems still existed for the brown pelican. National Wildlife Health Laboratory records of brown pelican mortality from 1976 to 1983 documented 10 die-off incidents totaling over 212 birds along the U.S. Atlantic Coast (Service 2007a, p. 29). More recently National Wildlife Health Laboratory records from July 1995 through June 2003 documented 13 incidents of brown pelican mortality for the continental U.S. east of the Rocky Mountains. None of these records cite problems with heavy metals, and pesticides were implicated in just one of these cases (USGS 2003b). Two pelicans from Florida had moderate brain acetlycholinesterase activity depression, an indicator of poisoning from either organophosphorus or carbamate pesticides. While these currently applied, short-lived, non-organochlorine pesticides may cause occasional mortality of individual pelicans, they do not accumulate within the body, nor do they persist in the environment; therefore, they are unlikely to result in widespread reproductive failure like that caused by the use of organochlorine pesticides.

An important regulatory mechanism affecting brown pelicans is the requirement that pesticides be registered with the EPA. Under the authority of the FIFRA, the EPA requires environmental testing of the effects of all new pesticides on representative wildlife species prior to EPA granting a pesticide registration. The EPA evaluates pesticides before they can be marketed and used in the United States to ensure that they will not pose unreasonable adverse effects to human health and the environment. Pesticides that meet this test are granted a license or ''registration,'' which permits their distribution, sales, and use according to requirements set by EPA to protect human health and the environment. The requirement for evaluation of pesticides during the registration process would not be altered if the pelican was delisted and protection of the Act were not available.

Efforts to ban and restrict use of persistent organic pollutants have reduced the contaminants that are most likely to cause widespread reproductive failures, and thus endangerment of the species. Other contaminants continue to be detected in some brown pelican populations, but these are generally short-lived pesticides or contaminants and occur only on a local scale and affect few individuals and therefore are unlikely to have long-term effects on brown pelican reproduction or numbers. Regulatory mechanisms within the United States to evaluate and register pesticides, as well as the international convention restricting use of persistent organic pollutants, ensure that contaminant-caused mortality and widespread reproductive failures are unlikely to occur in the future. Therefore, we do not believe pesticides and contaminants will endanger the brown pelican throughout all of its range within the foreseeable future.

Commercial fishing. Commercial fishing can have a direct effect on pelicans through physical injury caused by trawling gear. In 1998, a number of live and dead brown pelicans washed up on the beach at Matagorda Island, Texas (Sanchez 2007). Many had obvious wing damage. This incident coincided with the opening of the summer shrimp season. A similar incident in 1999 also coincided with the summer shrimp season (Sanchez 2007). It is possible that the young, inexperienced birds were colliding with the shrimp net lines while attempting to feed on the bycatch (unwanted marine creatures that are caught in the nets while fishing for another species), resulting in incidental death. Commercial fishing may adversely affect individual brown pelicans on a short-term, localized basis, but we do not believe it poses a rangewide threat to the continued existence of the species. Therefore, we do not believe this impact will become a threat that is likely to endanger the brown pelican throughout all of its range in the foreseeable future.

Recreational fishing. Recreational fishing can have a direct effect on pelicans through physical injury caused by fishing tackle. Pelicans are occasionally hooked by people fishing from piers or boats (Service 1983, p. 62). Superficially embedded hooks can often be removed without damage; however, a

small tear in the mouth pouch can hinder feeding and cause death from starvation (Service 1983, p. 63). Mortality is likely if a hook is swallowed or if there is substantial injury during hook removal (Service 1983, p. 63). Pelicans can become ensnared in monofilament fishing line which can result in serious injury, infections from cuts, impaired movement and flight, inability to feed, and death (Service 1983, p. 63).

Pelican Harbor Seabird Station, Inc., a Florida wildlife rehabilitator, reported that of the 200 pelicans handled in 1982, roughly 71 percent had fishing-related injuries. Of these, 12 (8.5 percent) died or were permanently crippled; the remainder were rehabilitated. Fishing-related injuries comprised about 35 percent of all observed mortality (February 4, 1985; 50 FR 4943). Another seabird rehabilitation group reported treating some 450 brown pelicans for fish line or hook injuries over a 4-year period (February 4, 1985; 50 FR 4943). However, this number of individuals affected is small in comparison to population numbers and is therefore unlikely to affect long-term population stability.

Mortality from recreational fishing is thought to be insignificant to overall population dynamics, although it has been a significant cause of injury/mortality to newly fledged pelicans near colonies in California in the past (Service 1983, p. 62). Live anchovies used for bait and chumming (cut or ground bait dumped into the water to attract fish to the area where one is fishing) attract young pelicans, and they often swallow baited hooks that they encounter, which become embedded in bills or pouches (Service 1983, p. 63). The closure to vessels at depths of less than 37 m (120 ft) offshore of West Anacapa Island has provided physical separation between fishing boats and the nesting colony, which has greatly reduced the likelihood of these interactions (Gress 2006). Several educational pamphlets have been developed and distributed by National Oceanic and Atmospheric Administration-Fisheries, in conjunction with the Service, NPS, and CDFG, to inform recreational fishermen in California about the impacts of hook and line injuries to pelicans and other seabirds and give step-by-step instructions for removing hooks and fishing lines from entangled birds.

While injuries and deaths from recreational fishing do occur, we believe they are accidental and localized, that they affect only few individuals, and are not likely to threaten or endanger the brown pelican throughout all of its range in the foreseeable future.

Offshore oil and gas development. Oil spills and chronic oil pollution from oil tankers and other vessels, offshore oil platforms, and natural oil seeps continue to represent a potential source of injury and mortality to pelicans (Carter 2003, p. 3). The effects of oil on pelicans persist beyond immediate physiological injuries. Survival and future reproductive success of oiled pelicans that are rehabilitated and released are lower than for non-oiled pelicans (Anderson *et al.* 1996, p. 715). Injury and mortality of large numbers of pelicans would likely result if a significant oil spill occurred near a nesting colony during the breeding season, or near traditional roost sites.

Oil spills from oil tankers and other vessels are far more common than spills from oil platforms (Carter 2003, p. 3). Since 1984, twelve major oil spill-related seabird mortality events occurred along the coast of California, all of which may have adversely affected breeding, roosting, or migrating pelicans (Hampton *et al.* 2003, p. 30). Only one of these events was from an offshore oil platform, the rest were from tankers, oil barges, or non-tanker vessels (Hampton *et al.* 2003, p. 30). As an example, on February 7, 1990, the oil tanker vessel *American Trader* ran aground at Huntington Beach, California, and spilled 1.6 million liters (416,598 gallons) of Alaskan crude oil (ATTC 2001, p. 1). An estimated 195 pelicans died as a result of the spill, and 725 to 1,000 oiled pelicans were observed roosting in the Long Beach Breakwater after the spill (ATTC 2001, p. 10). The spill occurred just before the start of the breeding season as the birds gathered at traditional roosts before moving to breeding islands, making large numbers of birds vulnerable to the oil (ATTC 2001, p. 10).

National Marine Sanctuary regulations prohibit vessels, including oil tankers, from operating within 1.85 km (1.15 mi) of any of the Channel or Farallon islands or in the Monterey Bay or Olympic Coast sanctuaries (15 CFR 922). In the event of a major oil spill, this is probably an insufficient distance from the pelican nesting colonies to prevent impacts. Vessels frequently pass through the SCB in established shipping lanes that are within 5 km (3 mi) of Anacapa Island to the north and within 50 km (31 mi) to the south (Carter *et al.* 2000, p. 436). A traffic separation scheme north of Anacapa Island in the Santa Barbara Channel separates opposing flows of vessel traffic. The shipping lanes and traffic separation scheme in the SCB reduces the likelihood of spills because it reduces the probability of vessel-to-vessel and vessel-to platform collisions. However, shipping traffic is increasing offshore of California, and this may result in increased oil spills and pollution events (McCrary *et al.* 2003, p. 48). There is also a shipping lane that passes within 25 km (16 mi) of the Coronados Islands in Mexico (Carter *et al.* 2000, p. 436). However, because tanker spills are localized, we do not believe this impact will become a threat that will endanger the brown pelican throughout all of its range in the foreseeable future.

There are 27 offshore oil platforms and 6 artificial oil and gas islands off the coast of southern and central California, and there is currently a moratorium on new oil platforms in State and Federal waters (McCrary *et al.* 2003, p. 43). There are no platforms within the Channel Islands National Marine Sanctuary (McCrary *et al.* 2003, p. 44) and oil and gas exploration and development are prohibited within this Sanctuary, excluding a few oil and gas leases that existed prior to its designation. Oil and gas exploration and development are prohibited in the other three National Marine Sanctuaries, Olympic Coast (Washington), Gulf of the Farallones (California), and Monterey Bay (California) (15 CFR 922), with the exception of a few leases that existed prior to each sanctuary's creation, although new petroleum operations are unlikely to occur on these leases (McCrary *et al.* 2003, p. 45). The sanctuaries essentially provide a minor buffer from oil platform accidents, allowing time for breakup of oil discharges, and time to respond before the oil reaches the shore. The last major spill from any of the oil platforms or associated pipelines was a well blowout in 1969 that released 80,000 barrels in the Santa Barbara Channel; however, Minerals Management Service (MMS) estimates the risk of a spill of 1,000 barrels or more over the next 28 years at 41 percent (McCrary *et al.* 2003, p. 45). However, the likelihood that a spill would affect brown pelicans would depend on the location, timing, and local conditions associated with the spill. Past spills from oil platforms have not limited brown pelican recovery in California.

In the Gulf of Mexico, the Outer Continental Shelf (OCS) is categorized into planning areas. The Central Planning Area includes Louisiana and Mississippi, and the Western Planning Area includes Texas (Ji *et al.* 2002, p. 19). Based on sheer volume of oil transported to those facilities, coastal birds and their habitats in these areas are at greatest risk from spills

originating in coastal waters. An MMS Oil Spill Risk Analysis (OSRA) predicted that in these Planning Areas large oil spills associated with OCS activities are low-probability events (Service 2003b, p. 7). The OSRA estimated only a 4 to 8 percent probability that an oil spill in the Gulf of Mexico greater than 1,000 barrels of oil would occur and contact brown pelican habitat in the Central Planning Area, and a similar spill scenario has only a 4 to 7 percent probability of reaching the Western Planning Area (Ji *et al.* 2002, pp. 56, 59). Estimates derived from the OSRA model are ''conservative'' in that they presume the persistence of the entire volume of spilled oil over the entire duration time and do not include cleanup activities or natural weathering of the spill (Ji *et al.* 2002, pp. 12–13).

Beginning in the 1980s, MMS established comprehensive pollution prevention requirements that include redundant safety systems, along with inspecting and testing requirements to confirm that those devices are working properly (Service 2003b, p. 7). There was an 89 percent decline in the volume of oil spilled per billion barrels produced from OCS operations between 1980 and the present, compared to the total volume spilled prior to 1980. Additionally, this spill reduction volume occurred during a period when OCS oil production has been increasing (Service 2003b, p. 7). Spills less than 1,000 barrels are not expected to persist as a slick on the water surface beyond a few days (Service 2003b, p. 8). Because spills in the OCS would occur at least 3 miles from shore, it is unlikely that any spills would make landfall prior to breaking up (Service 2003b, p. 8).

There are a number of regulatory mechanisms within the U.S. that address oil and gas operations. MMS is also responsible for inspection and monitoring of OCS oil and gas operations (McCrary *et al.* 2003, p. 46). All owners and operators of oil handling, storage, or transportation facilities located seaward of the coastline must submit an Oil Spill Response Plan to the MMS for approval (30 CFR part 254). Several Federal and State laws were instituted in the 1970s to reduce oil pollution (Carter 2003, p. 2). In 1990, State and Federal oil pollution acts were passed, and agencies developed programs to gather data on seabird mortality from oil spills, improve seabird rehabilitation programs, and develop restoration projects for seabirds (Carter 2003, p. 2). There have also been improvements in oil spill response time, containment, and cleanup equipment (McCrary *et al.* 2003, p. 46). In the absence of swift and effective action by the responsible party for a spill, the U.S. Coast Guard will initiate action pursuant to the Oil Pollution Act of 1990 to control and clean up a spill offshore under regional area contingency plans, which have been developed for this scenario (40 CFR 300 Subpart B). These measures have not entirely eliminated the potential for oil spills, but have reduced the likelihood of spills, thereby reducing pelican deaths and alleviating the magnitude of the impacts on pelicans and other seabirds if a spill were to occur (Carter 2003, p. 3).

If an oil spill or other hazardous materials release does occur in the United States, the Natural Resource Damage Assessment (NRDA) process is in place to identify the extent of natural resource injuries (including injuries to wildlife), the best methods for restoring those resources, and the type and amount of restoration required. The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended (42 U.S.C. 9601 *et seq.*), the Oil Pollution Act of 1990 (OPA) (33 U.S.C. 2701 *et seq.*), and the Federal Water Pollution Control Act or Clean Water Act (CWA), as amended (33 U.S.C. 1251 *et seq.*) form the legal foundation for the NRDA Restoration Program and provide trustees with the legal authority to carry out Restoration Program responsibilities. Trustees for natural resources include the Departments of Agriculture, Commerce, Energy, and the Interior, and other agencies authorized to manage or protect natural resources (Environmental Protection Agency 2007a, Environmental Protection Agency 2007b, Department of the Interior 2007). Therefore, if an oil spill occurs and brown pelicans are negatively affected, injuries to brown pelican populations or their habitat may be restored through this process. For example, in California, negative effects to brown pelicans have been mitigated through the implementation of measures in the American Trader Restoration Plan, the Command Oil Spill Restoration Plan, the Torch/Platform Irene Restoration Plan, and the Montrose Settlement Restoration Plan.

Oil spills from oilfields, pipelines, or ships have impacted brown pelicans in some other countries, for example, oiling related to an oilfield in Mexico (King *et al* 1985, p. 208; Anderson *et al.* 1996, p. 211) and from a ship in the Galapagos Islands, Ecuador (Lougheed *et al.* 2002, p. 5). Although 117 brown pelicans were reported as affected by the 2001 spill in the Galapagos Islands from the fuel tanker Jessica, no mortalities of pelicans were reported (Lougheed *et al.* 2002, p. 29). From these accounts, brown pelicans frequently survive these incidences, especially when receiving some rescue cleanup. Oil spills have been identified as a possibility in oil-producing areas of Venezuela, with concern for effects on marine productivity and the food supply of brown pelicans, as well as for direct oiling of birds (Service 2007a, p. 39). While spills outside of the United States are still a possibility, they would be localized and thus would not become a threat that would endanger the brown pelican throughout all of its range in the foreseeable future. In addition, there are a number of international conventions and their amendments, including the International Convention on Civil Liability for Oil Pollution Damage, International Convention on Oil Pollution Preparedness Response and Co-operation, International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, and the International Convention on the Establishment of an International Fund of Compensation for Oil Pollution Damage. The majority of countries within the range of brown pelicans are parties to one of more of these international agreements (*http://sedac.ciesin.org/entri/treatyMultStatus.jsp*), which would assist with prevention, as well as response and restoration activities in the event of oil spills outside the United States.

Other much less common effects of offshore oil and gas development have occasionally been documented. There have been several instances in Louisiana of unusual and infrequent mortalities, generally involving juvenile brown pelicans, associated with the design and construction of inshore and offshore oil platforms (Fuller 2007a, p. 1). Brown pelicans have been observed strangling in inshore rig railings and drowning in uncovered casements (large pipes used in the drilling process that may fill with water). The number of brown pelican mortalities in these incidences was low. However, through consultation with the Service, MMS, and the Louisiana Department of Natural Resources those features were modified to virtually eliminate the problem (Fuller 2007a, p. 1). Because brown pelicans are also protected by the MBTA, these modifications to prevent mortalities are expected to remain in place.

Oil spills and oil pollution continue to have potential impacts on brown pelicans, but spill prevention, response, and restoration activities have become more organized and effective, and the

breeding range is large enough that a single spill, even a major one, would likely only affect a small fraction of the population. Additionally, the death of pelicans from design flaws on platforms is rare and being remedied. Therefore, we believe that oil and gas activities, while they may occasionally have short-term impacts to local populations, will not become threats that endanger the brown pelican throughout all of its range in the foreseeable future.

Miscellaneous. Brown pelican mortalities have been documented from electrocution on power lines and drowning in water intake pipes. In both cases, through consultation with the Service, those features were modified to virtually eliminate the problem (Fuller 2007b, p. 1).

Conclusion

As required by the Act, we considered the five potential threat factors to assess whether the brown pelican is threatened or endangered throughout all of its range. When considering the listing status of the species, the first step in the analysis is to determine whether the species is in danger of extinction throughout all of its range. If this is the case, then the species is listed in its entirety. For instance, if the threats on a species are acting only on a portion of its range, but the effects of the threats are such that they place the entire species in danger of extinction, we would list the entire species.

The primary reason for severe declines in the brown pelican population in the United States, and for designating the species as endangered, was DDT contamination in the 1960s and early 1970s. Additionally, pesticides like dieldrin and endrin were also found to negatively impact brown pelicans. Since the banning of these organochlorine pesticides, brown pelican abundance within the U.S. has shown a dramatic recovery, and although annual reproductive success varies widely, populations have remained generally stable for at least 20 years. The EPA requires registration and testing of new pesticides to assess potential impacts on wildlife, so we do not anticipate that a pesticide that would adversely affect brown pelicans will be permitted in the future. Although DDT contamination continues to persist in the environment, based on the nesting population size, overall population stability, and improved reproductive success, the continued existence of brown pelicans is no longer threatened by exposure to DDT or its metabolites, and populations within the United States have recovered enough from past exposure to warrant a proposal for delisting. We have no evidence that brown pelicans outside the United States ever declined in response to persistent organic pesticides.

Nesting and roosting colonies in the United States are expected to continue to be protected from human disturbance through local conservation measures, laws, the numerous restoration plans, and ownership of many of the nesting and roosting habitats by conservation groups and local, State, and Federal agencies. In most countries outside of the United States where brown pelicans occur, protection is expected to continue through implementation of restoration plans, designated biosphere reserves and parks, and land ownership by conservation organizations and local, State, and Federal governments.

Some nesting and roosting habitat is expected to continue to be limited at certain local scales, just as some habitat destruction is expected to continue. However, the majority of nesting sites within the United States and many outside the United States are protected. While some nesting habitat may be lost, it is not likely to be a limiting factor in brown pelican reproductive success, since pelicans are broadly distributed and have the ability to shift breeding sites in response to changing habitat and prey abundance conditions. In response to storms, erosion, and lack of sedimentation, brown pelicans have exhibited their dispersal capabilities; they have established new colonies elsewhere, and shown an ability to rebound from low numbers. Additionally, there are several restoration activities, such as artificial island creation and enhancement with dredge material and barrier island restoration and protection that will continue to enhance and protect brown pelican habitat, particularly within the U.S. Gulf Coast region.

Impacts from weather events, such as El Niños and severe freezes, are also expected to continue. Natural factors such as these may adversely affect pelican reproduction and survival on a short-term, localized basis, but alone pose only a minimal threat to the species at current population numbers.

Brown pelican prey abundance in the United States will continue to be monitored and managed in accordance with the Magnuson-Stevens Fishery Conservation and Management Act of 1976. We do not have any information from outside of the United States on commercial fishery impacts to brown pelican prey abundance; however, based on population numbers, there is no reason to believe that commercial fisheries are currently limiting brown pelican reproductive success.

Brown pelicans are not threatened with overutilization for commercial, recreational, scientific, or educational purposes. Research on pelicans is generally observational and noninvasive. Although several diseases have been identified as a source of mortality for brown pelicans, they appear to be self-limiting and sporadic and are not likely to impact long-term population trends. Predation is a minor threat that occurs when disturbance to nesting colonies leaves eggs and chicks unprotected, making it essential that nesting colonies are protected from disturbance, as noted above.

Commercial and recreational fishing may adversely affect brown pelicans on a localized basis, but pose no rangewide threat to the continued existence of the species. Oil spills and oil pollution continue to be a potential threat, but the breeding range is large enough that a single spill, even a major one, would likely only affect a small fraction of the population. This threat has been alleviated in the United States to some degree by stringent regulations for extraction equipment and procedures, traffic separation schemes, shipping lanes that reduce the likelihood of collisions or spills, and improvements in oil spill response, containment, and cleanup. These measures reduce the probability of spills and also may reduce adverse impacts if a spill were to occur.

In conclusion, the single most important threat to the continued existence of the brown pelican was from DDT, which is now banned in the United States, Mexico, and Canada. In Central and South America and the West Indies, most countries have either banned or restricted use of DDT or made its importation illegal (*http://www.pesticideinfo.org/Detail_ChemReg.jsp?Rec_Id=PC33482*). Although other localized threats to the brown pelican remain throughout its range, as discussed above, they are at a low enough level that none are likely to have long-term population level or demographic effects on brown pelican populations in the foreseeable future. We believe this species no longer requires the protection of the Act. Therefore, we propose to remove the brown pelican from the List of Endangered and Threatened Wildlife.

Having determined that the brown pelican does not meet the definition of threatened or endangered, we must next consider whether there are any significant portions of its range that are in danger of extinction or are likely to become endangered in the foreseeable

future. On March 16, 2007, a formal opinion was issued by the Solicitor of the Department of the Interior, ''The Meaning of In Danger of Extinction Throughout All or a Significant Portion of Its Range'' (U.S. DOI 2007). We have summarized our interpretation of that opinion and the underlying statutory language below. A portion of a species' range is significant if it is part of the current range of the species and it contributes substantially to the representation, resiliency, or redundancy of the species. The contribution must be at a level such that its loss would result in a decrease in the ability to conserve the species. In other words, in considering significance, the Service should ask whether the loss of this portion likely would eventually move the species toward extinction, but not necessarily to the point where the species should be listed as threatened.

The first step in determining whether a species is threatened or endangered in a significant portion of its range is to identify any portions of the range of the species that warrant further consideration. The range of a species can theoretically be divided into portions in an infinite number of ways. However, there is no purpose to analyzing portions of the range that are not reasonably likely to be significant and threatened or endangered. To identify only those portions that warrant further consideration, we determine whether there is substantial information indicating that (i) the portions may be significant and (ii) the species may be in danger of extinction there or likely to become so within the foreseeable future. In practice, a key part of this analysis is whether the threats are geographically concentrated in some way. If the threats to the species are essentially uniform throughout its range, no portion is likely to warrant further consideration. Moreover, if any concentration of threats applies only to portions of the range that are unimportant to the conservation of the species, such portions will not warrant further consideration.

If we identify any portions that warrant further consideration, we then determine whether in fact the species is threatened or endangered in any significant portion of its range. Depending on the biology of the species, its range, and the threats it faces, it may be more efficient for the Service to address the significance question first, or the status question first. Thus, if the Service determines that a portion of the range is not significant, the Service need not determine whether the species is threatened or endangered there; if the Service determines that the species is not threatened or endangered in a portion of its range, the Service need not determine if that portion is significant.

The terms ''resiliency,'' ''redundancy,'' and ''representation'' are intended to be indicators of the conservation value of portions of the range. Resiliency of a species allows the species to recover from periodic or occasional disturbance. A species will likely be more resilient if large populations exist in high-quality habitat that is distributed throughout the range of the species in such a way as to capture the environmental variability found within the range of the species. It is likely that the larger size of a population will help contribute to the viability of the species overall. Thus, a portion of the range of a species may make a meaningful contribution to the resiliency of the species if the area is relatively large and contains particularly high-quality habitat or if its location or characteristics make it less susceptible to certain threats than other portions of the range. When evaluating whether or how a portion of the range contributes to resiliency of the species, it may help to evaluate the historical value of the portion and how frequently the portion is used by the species. In addition, the portion may contribute to resiliency for other reasons—for instance, it may contain an important concentration of certain types of habitat that are necessary for the species to carry out its life-history functions, such as breeding, feeding, migration, dispersal, or wintering.

Redundancy of populations may be needed to provide a margin of safety for the species to withstand catastrophic events. This does not mean that any portion that provides redundancy is a significant portion of the range of a species. The idea is to conserve enough areas of the range such that random perturbations in the system act on only a few populations. Therefore, each area must be examined based on whether that area provides an increment of redundancy that is important to the conservation of the species.

Adequate representation insures that the species' adaptive capabilities are conserved. Specifically, the portion should be evaluated to see how it contributes to the genetic diversity of the species. The loss of genetically based diversity may substantially reduce the ability of the species to respond and adapt to future environmental changes. A peripheral population may contribute meaningfully to representation if there is evidence that it provides genetic diversity due to its location on the margin of the species' habitat requirements.

Applying the process described above for determining whether a species is threatened in a significant portion of its range, we next addressed whether any portions of the range of the brown pelican warranted further consideration. We noted in the five-factor analysis that numerous factors continue to affect brown pelicans in various geographical areas within the range. However, we conclude that these areas do not warrant further consideration because the areas where localized effects may still occur are small (in the context of the range of the species) and affect a few pelicans from one year to the next (such as abandonment of a single breeding colony or entanglement in fishing gear), thus there is no substantial information that these areas are a significant portion of the range. Some areas that may be significant experience short-term or sporadic events (such as the Gulf Coast region experiencing tropical storm events, or Pacific Coast populations experiencing reduced nesting success during an El Niño event), but we do not have substantial information that brown pelicans in these areas are likely to become in danger of extinction in the foreseeable future.

As discussed previously in Distribution and Population Estimates, Recovery Plans, and Factors A and E, declines in wintering numbers of brown pelicans have been noted in Puerto Rico, which superficially suggest that Puerto Rico warrants further consideration. However, Puerto Rico represents a very small portion of the global population of brown pelicans, both numerically and geographically. Causes for the apparent decline in number of wintering birds are not known and no specific threats to brown pelicans in Puerto Rico and the Virgin Islands have been identified. Although numbers of breeding pelicans in Puerto Rico and the Virgin Islands varied from year to year in both the 1980s and 1990s, there was no trend in breeding pelican numbers that would suggest that the species is in danger of extinction in that area. Nesting sites are protected, contaminants are not affecting brown pelican populations (Collazo *et al.* 1998, pp. 63–64), and numbers of nesting pairs appear to be holding steady (Collazo *et al.* 2000, p. 42). Juvenile and adult pelicans from the Virgin Islands disperse to Puerto Rico (Collazo *et al.* 1998, p. 63), so proximity to breeding colonies on the Virgin Islands and other islands would likely re-establish the species on Puerto Rico even if it were lost. Brown pelicans in Puerto Rico belong to the subspecies of brown pelican distributed throughout the West

Indies and along the Caribbean coasts of Colombia and Venezuela. We currently have no information to indicate that birds in Puerto Rico are genetically different from other members of the Caribbean subspecies, or that genetic exchange among other areas in the Caribbean is limited, and therefore cannot conclude that brown pelicans in Puerto Rico contribute meaningfully to resiliency, redundancy, or representation of the species. In the absence of identified threats or evidence that brown pelicans in Puerto Rico represent a significant portion of the species range, we did not consider this portion of the range further. In summary, in our analysis of the five listing factors, we did not identify any significant continuing threats in any portion of the species range that warrants further consideration.

In conclusion, major threats to brown pelicans have been reduced, managed, or eliminated. Remaining factors that affect brown pelicans occur on localized scales, are short-term events, or affect small numbers of individuals and do not have long-term effects on population numbers or distribution of the species. We have determined that none of the existing or potential threats, either alone or in combination with others, are likely to cause the brown pelican to become in danger of extinction within the foreseeable future throughout all or any significant portion of its range. We believe the brown pelican no longer requires the protection of the Act, and, therefore, we propose to remove it from the Federal List of Endangered and Threatened Wildlife.

Effect of This Rule

This rule, if made final, would revise 50 CFR 17.12(h) to remove the brown pelican from the List of Endangered and Threatened Wildlife. Because no critical habitat was ever designated for this species, this rule would not affect 50 CFR 17.95.

If this species is removed from the List of Endangered and Threatened Wildlife, the prohibitions and conservation measures provided by the Act, particularly through sections 7 and 9, of the Act would no longer apply. Removal of the brown pelican from the List of Endangered and Threatened Wildlife would relieve Federal agencies from the need to consult with us to ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of this species. It will not, however, affect the protection given to all migratory bird species under the MBTA. To understand the implications of this proposed rule, it is important to review the changes in protection for brown pelicans that will occur should this proposed rule become final.

The take of all migratory birds, including brown pelicans, is governed by the MBTA. The MBTA makes it unlawful to at any time, by any means or in any manner, to pursue, hunt, take, capture, kill, attempt to take, capture, or kill, possess, offer for sale, sell, offer to barter, barter, offer to purchase, purchase, deliver for shipment, ship, export, import, cause to be shipped, exported, or imported, deliver for transportation, transport or cause to be transported, carry or cause to be carried, or receive for shipment, transportation, carriage, or export, any migratory bird, any part, nest, or eggs of any such bird, or any product, whether or not manufactured, which consists, or is composed in whole or part, of any such bird or any part, nest, or egg thereof (16 U.S.C 703(a)). Brown pelicans are among the migratory birds protected by the MBTA. The MBTA regulates the taking of migratory birds for educational, scientific, and recreational purposes. Section 704 of the MBTA states that the Secretary of the Interior (Secretary) is authorized and directed to determine if, and by what means, the take of migratory birds should be allowed, and to adopt suitable regulations permitting and governing the take. In adopting regulations, the Secretary is to consider such factors as distribution and abundance to ensure that any take is compatible with the protection of the species. Modification to brown pelican habitat would constitute a violation of the MBTA only to the extent it directly takes or kills a brown pelican (such as removing a nest with chicks present).

Post-Delisting Monitoring Plan

Section 4(g)(1) of the Act requires that the Secretary, through the Service, implement a monitoring program for not less than 5 years for all species that have been recovered and delisted. The purpose of this requirement is to develop a program that detects the failure of any delisted species to sustain itself without the protective measures provided by the Act. If at any time during the monitoring program, data indicate that the protective status under the Act should be reinstated, we can initiate listing procedures, including, if appropriate, emergency listing. At the conclusion of the monitoring period, we will review all available information to determine if relisting, the continuation of monitoring, or the termination of monitoring is appropriate.

Monitoring Techniques—We will coordinate with other Federal agencies, State resource agencies, interested scientific organizations, and others as appropriate to develop and implement an effective monitoring program to track the population status of the brown pelican. The minimum parameter to be used to evaluate population trends will be surveys of nesting birds to assess the number of nesting pairs and their productivity in each of the colonies. These types of surveys most efficiently overlap ongoing surveys for other sea birds and provide a quick overview of the status of the species. We will also cooperate with and encourage continued monitoring of nesting populations in other countries and examine survey reports with comparable data when available.

In addition to the nesting bird and productivity surveys, we will review the following information, when available, that will help to evaluate the status of the species in more detail.

(1) Contaminants—To determine if some individual pelicans are still experiencing reduced reproductive success caused by the presence of residual DDT contamination, eggshell thickness and contaminant concentrations in non-viable eggs will be analyzed to determine the current level of contaminant exposure. In addition, information will be gathered from work on other similar sea birds as an indicator of potential problems.

(2) Prey Availability—To determine if prey availability is impacting pelican productivity in the future, we will obtain and examine the annual Stock Assessment and Fishery Evaluation report written by the Pelagic Fisheries Management Council (required by the Coastal Pelagic Species Fisheries Management Plan). This report details any significant changes or trends in pelagic fish populations, fisheries, or marine ecosystems, documents harvest levels, and assesses the success of state and Federal fishery management programs. Additionally, we will also obtain and examine any reports produced by either the Gulf Coast or Caribbean Fishery Management Councils.

(3) Dietary Composition—To determine the predominant prey species, we will collect and analyze diet samples from brown pelicans. In combination with information on prey availability, this will help us to monitor how reproductive success is responding to prey availability.

(4) Habitat Protection—To monitor the status of brown pelicans, we will review conservation and management actions taken on certain properties including, but not limited to, those owned by (1) the National Park Service;

(2) the Fish and Wildlife Service, including National Wildlife Refuges; (3) the Department of Defense; (4) international reserves or biospheres; and (5) private lands.

(5) Disease—To monitor pelican mortalities from diseases such as West Nile virus, avian influenza, or avian botulism, we will review information gathered from work on other similar sea birds.

There has never been a coordinated rangewide monitoring plan for the brown pelican and we do not believe a monitoring effort of this magnitude is necessary in order to meet our requirements under 4(g)(1) of the Act. Whenever possible, we will use the results of on-going monitoring conducted by States, Federal agencies, and other partners. Following are descriptions of ongoing brown pelican and/or sea bird monitoring efforts that we believe will continue in the future. Taken together, we believe these separate monitoring efforts will provide an overview of the status of the species as a whole.

(1) Texas Colonial Waterbird Count (TCWC)—This program is organized by the Service, Texas Parks and Wildlife Department, Texas Audubon Society, and academic institutions. TCWC has tracked population trends in Texas for the brown pelican since 1972.

(2) LDWF annual surveys—LDWF conducts aerial surveys annually, counting numbers of brown pelican nests and fledglings. These surveys generally begin in March and occur monthly through July. Multiple surveys allow for preliminary estimates of reproductive success each year. Additionally, LDWF periodically conducts wading and seabird colony surveys in Louisiana.

(3) Roost Atlas—This effort is organized and funded by the Service, California Department of Fish and Game, American Trader Trustee Council, and private contractors. Expected to be finished by 2009, it will collate existing brown pelican roost survey data along the coast of California into a roost atlas for use by managers to identify and prioritize important roost sites for conservation and restoration. Completion of the roost atlas will assist with identifying roost sites for continued survey or monitoring efforts.

(4) The Great Backyard Bird Count (GBBC)—This program is organized by Cornell Lab of Ornithology and the National Audubon Society. Four-day surveys are conducted in February of each year.

(5) National Health Institute—This program is managed by the U.S. Geological Survey. Its mission is to provide information, technical assistance, research, education, and leadership on national and international wildlife health issues. As part of this role, it collects data and tracks avian diseases and mortality, including data on brown pelicans.

Following are descriptions of ongoing or future planned brown pelican and other restoration projects we expect to contribute information concerning the status of threats to the species. We expect implementation of these programs and their associated monitoring programs will provide such information as the amount, protection, and restoration of brown pelican habitat, as well as the effectiveness of efforts to reduce disturbance and incidental mortality of brown pelicans.

(1) Coastal protection and restoration funding in Louisiana—Because Louisiana coastal land loss has broad negative implications beyond solely the effects to nesting brown pelicans (e.g., to the state economy, oil and gas production, navigation security, fisheries and flyways, and strategic petroleum reserve facilities), coastal habitat protection and restoration has been and will continue to be a priority for Louisiana. Currently there are several laws and programs aimed at protecting and restoring coastal wetlands (including barrier islands) in Louisiana. They include: the Coastal Wetlands Planning, Protection, and Restoration Act (CWPPRA), Coast 2050, the Louisiana Coastal Area Study (LCA), the Energy Recovery Act of 2005, and the Coastal Protection and Restoration Authority of Louisiana's Draft Comprehensive Coastal Protection Master Plan.

(2) The Corps' Beneficial Use of Dredged Material Program in Louisiana—The New Orleans District of the Corps beneficially uses approximately 11.1 million yds^3 (8.5 million m^3) of dredged material each year in the surrounding environment (Corps 2004; p. xi) and these activities are expected to continue.

(3) American Trader Restoration Plan—This plan is implemented by the ATTC, Service, CDFG, and National Oceanic and Atmospheric Administration (ATTC 2001).

(4) The Command Oil Spill Restoration Plan—This plan is implemented by the Command Oil Spill Trustee Council, Service, CDFG, California Department of Parks and Recreation, California State Lands Commission, and National Oceanic and Atmospheric Administration (Command Oil Spill Trustee Council 2004).

(5) The Luckenbach Restoration Plan—This plan is implemented by the S.S. Jacob Luckenbach Oil Spill Trustee Council, Service, CDFG, National Park Service, and National Oceanic and Atmospheric Administration (Luckenbach Trustee Council 2006).

(6) The Montrose Settlements Restoration Program—Implemented by the Montrose Trustee Council, National Oceanic and Atmospheric Administration, U.S. Fish and Wildlife Service, National Park Service, California Department of Fish and Game, California Department of Parks and Recreation, and California State Lands Commission (MSRP 2005).

(7) The Torch/Platform Irene Restoration Plan—This plan is implemented by the Torch/Platform Irene Trustee Council, Service, CDFG, U.S. Department of Air Force—Vandenberg AFB, and California State Lands Commission (Torch/Platform Irene Trustee Council 2006).

At the end of the post-delisting monitoring period, we will review all available monitoring data to determine whether relisting, continuation of monitoring, or termination of monitoring is appropriate. We will also consult with the States of California, Texas, and Louisiana and other partners to determine the need for future monitoring efforts.

We will take appropriate action if, during or after the monitoring effort, if new information suggests that the brown pelican meets the definition of threatened or endangered. We will consider evidence of any factors significantly affecting the status of the species which may indicate that a serious decline is occurring or is likely to occur. These factors include, but are not limited to the following: (a) Contaminant-related concerns which result in mortality or effects on breeding activities; (b) declining numbers of occupied nesting areas; (c) declining reproduction; (d) significant changes in distribution; and (e) downward trends in overall population status not as a result of temporary natural factors (e.g., El Niño or storm events).

Paperwork Reduction Act

Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) require that Federal agencies obtain approval from OMB before collecting information from the public. A Federal 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. OMB approval is required if information will be collected from 10 or more

persons (5 CFR 1320.3). ''Ten or more persons'' refers to the persons to whom a collection of information is addressed by the agency within any 12-month period, and to any independent entities to which the initial addressee may reasonably be expected to transmit the collection of information during that period, including independent State, territorial, Tribal, or local entities and separately incorporated subsidiaries or affiliates. For the purposes of this definition, ''persons'' does not include employees of the respondent acting within the scope of their employment, contractors engaged by a respondent for the purpose of complying with the collection of information, or current employees of the Federal government when acting within the scope of their employment, but it does include former Federal employees. The draft post-delisting monitoring plan that will be developed for the brown pelican may contain a requirement for information collection; however, we do not anticipate that it will affect 10 or more persons, as defined above. Therefore, OMB approval and a control number are not needed for the data collection contained in the monitoring plan. As the monitoring plan is further developed, if it becomes necessary to collect this information from 10 or more respondents per year, we will first obtain approval from OMB.

National Environmental Policy Act

We have determined that Environmental Assessments or Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with actions adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Clarity of This Regulation

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

a. Be logically organized;

b. Use the active voice to address readers directly;

c. Use clear language rather than jargon;

d. Be divided into short sections and sentences; and

e. Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

References Cited

A complete list of all references we cited is available upon request from the Austin Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary author of this proposed rule is the Austin Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

§ 17.11 [Amended]

2. Amend § 17.11(h) by removing the entry for ''Pelican, brown'' under BIRDS from the List of Endangered and Threatened Wildlife.

Dated: February 8, 2008.

Dirk Kempthorne,

Secretary of the Interior.

H. Dale Hall,

Director, Fish and Wildlife Service.

[FR Doc. E8–2829 Filed 2–19–08; 8:45 am]

BILLING CODE 4310–55–P

Federal Register

Wednesday,
February 20, 2008

Part III

The President

Executive Order 13461—Providing an Order of Succession Within the Department of Health and Human Services

Federal Register
Vol. 73, No. 34
Wednesday, February 20, 2008

Presidential Documents

Title 3—

The President

Executive Order 13461 of February 15, 2008

Providing an Order of Succession Within the Department of Health and Human Services

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345 *et seq.*, it is hereby ordered that:

Section 1. Subject to the provisions of section 3 of this order, the officers named in section 2, in the order listed, shall act as and perform the functions and duties of the Office of the Secretary of Health and Human Services (Secretary), if they are eligible to act as Secretary under the provisions of the Federal Vacancies Reform Act of 1998, during any period in which the Secretary has died, resigned, or become otherwise unable to perform the functions and duties of the office of Secretary.

Sec. 2. *Order of Succession.*

(a) Deputy Secretary of Health and Human Services;

(b) General Counsel of the Department of Health and Human Services;

(c) Assistant Secretary (Resources and Technology);

(d) Assistant Secretary (Planning and Evaluation);

(e) Administrator of the Centers for Medicare and Medicaid Services;

(f) Commissioner of Food and Drugs;

(g) Director of the National Institutes of Health;

(h) Assistant Secretary for Family Support;

(i) Other Assistant Secretaries of the Department of Health and Human Services appointed by the President, in the order in which they shall have taken the oath of office as such;

(j) Director, Centers for Disease Control and Prevention; and

(k) Director, Region 4.

Sec. 3. *Exceptions.*

(a) No individual who is serving in an office listed in section 2 of this order in an acting capacity, by virtue of so serving, shall act as Secretary pursuant to this order.

(b) Notwithstanding the provisions of this order, the President retains discretion, consistent with the Federal Vacancies Reform Act of 1998, to depart from this order in designating an acting Secretary.

Sec. 4. *Revocation.* Executive Order 13250 of December 28, 2001 (Providing An Order of Succession Within the Department of Health and Human Services), and the President's memorandum of March 19, 2002 (Designation of Officers of the Department of Health and Human Services), are hereby revoked.

THE WHITE HOUSE,
February 15, 2008.

[FR Doc. 08–797
Filed 2–19–08; 8:50 am]
Billing code 3195–01–P

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

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