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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–29335; Directorate Identifier 2007–NM–045–AD; Amendment 39–15592; AD 2008–13–29]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes. This AD requires repetitive inspections for cracking of the overwing frames from stations 845 to 905 (MD–87 stations 731 to 791), left and right sides, and corrective actions if necessary. This AD results from reports of cracked overwing frames. We are issuing this AD to detect and correct such cracking, which could sever the frame, increase the loading of adjacent frames, and result in damage to adjacent structure and loss of overall structural integrity of the airplane.

DATES: This AD is effective August 12, 2008.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of August 12, 2008.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024).

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Roger Durbin, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5233; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to all McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes. That NPRM was published in the **Federal Register** on September 28, 2007 (72 FR 55111). That NPRM proposed to require repetitive inspections for cracking of the overwing frames from stations 845 to 905 (MD–87 stations 731 to 791), left and right sides, and corrective actions if necessary.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received.

Request To Extend Compliance Time

Air Transport Association (ATA), on behalf of its member American Airlines, states that a 24-month compliance period for the initial inspections would be overly burdensome. The commenters request that we extend the compliance time to 48 months so operators can integrate the required actions with planned heavy maintenance visits. The commenters add that we did not consider the size of the fleet and the availability of parts when we determined the compliance period. American Airlines finds that a longer compliance time can be justified by applying statistically based risk analysis methods and accounting for the effect of flight cycles.

We do not agree to extend the compliance time. We have no data or analysis to support such an extension of the compliance period. For airplanes that have accumulated more than 20,000 total flight cycles, the extent of damage already accumulated on the affected fuselage frames cannot be predetermined, so accounting for subsequent flight cycles will provide no benefit. The 24-month compliance period is considered appropriate in light of the characteristics of crack growth, the probability of crack initiation, and the ability of operators to integrate the required actions into established maintenance practices. Currently there are insufficient statistical or other data to justify a compliance period beyond the proposed 24 months. However, paragraph (h) of this final rule provides operators the opportunity to request an extension of the compliance time if data are presented to justify such an extension. We have not changed the final rule regarding this issue.

Request To Delay Issuance of AD Pending Parts Availability

ATA, on behalf of its member American Airlines, notes that the rate of cracking noted in early inspections suggests that the supply of available spare parts is insufficient to support completion of the proposed actions within the 24-month compliance period. Delta Air Lines also expresses concern over the availability of spare frames and reports that all its repairs done to date have been done by frame replacement with a like part.

We infer that the commenters request that we wait to issue the final rule until sufficient parts are available. We disagree with the need to delay the final rule. Boeing has arranged to have additional frames manufactured as demand builds during the 24-month compliance period. Boeing expects a sufficient supply to be available to support the AD requirements. We are proceeding with issuance of the final rule as proposed.

Request To Revise Cost Estimate

ATA, on behalf of its member Delta Air Lines, notes that the estimated work hours to do the required actions assume that access to the overwing frames is available during a scheduled maintenance visit. The commenters assert that the 4-hour labor estimate applies only when the inspection can be done during a scheduled heavy maintenance visit, when the airplane is already opened up. Delta states that, in reality, up to 67 percent of its fleet will not be due for the heavy maintenance visit during the proposed compliance time. That portion of the fleet will require special-schedule inspection visits, and add at least 16 work hours to gain access to the inspection areas.

We infer that the commenters are requesting that we revise the cost estimate provided in the NPRM. We do not agree. The cost information provided in AD actions describes only the direct costs of the specific requirements. Based on the best data available, the manufacturer provided the number of work hours to do the required actions for this AD. We recognize that, in doing the actions required by an AD, operators might incur incidental costs, such as the time necessary for access and close, in addition to the direct costs. These incidental costs can vary significantly among operators. We have not changed the final rule regarding this issue.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD as proposed.

Interim Action

We consider this AD interim action. The manufacturer is currently developing a modification that will address the unsafe condition identified in this AD. Once this modification is developed, approved, and available, we may consider additional rulemaking.

Costs of Compliance

There are about 1,189 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
4	$80	None	$320, per inspection cycle	670	$214,400, per inspection cycle.

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

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

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

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

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

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

You can find our regulatory evaluation and the estimated costs of compliance 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:

2008–13–29 McDonnell Douglas: Amendment 39–15592. Docket No. FAA–2007–29335; Directorate Identifier 2007–NM–045–AD.

Effective Date

(a) This airworthiness directive (AD) is effective August 12, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from reports of cracked overwing frames. We are issuing this AD to detect and correct such cracking, which could sever the frame, increase the loading of adjacent frames, and result in damage to adjacent structure and loss of overall structural integrity 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.

Inspections

(f) Before the accumulation of 20,000 total flight cycles, or within 24 months after the effective date of this AD, whichever occurs later: Do general visual and high frequency eddy current inspections, and all applicable corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD80–53A301, Revision 1, dated May 25, 2007. Do the applicable

corrective actions before further flight after accomplishing the inspections. Repeat the inspections thereafter at applicable intervals not to exceed those specified in paragraph 1.E., ''Compliance,'' of the service bulletin.

Actions According to Previous Issue of Service Bulletin

(g) Inspections and related investigative and corrective actions are also acceptable for compliance with the requirements of paragraph (f) of this AD if done before the effective date of this AD in accordance with Boeing Alert Service Bulletin MD80–53A301, dated January 9, 2007.

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, Los Angeles Aircraft Certification Office (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.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Los Angeles ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane and 14 CFR 25.571, Amendment 45, and the approval must specifically refer to this AD.

Material Incorporated by Reference

(i) You must use Boeing Alert Service Bulletin MD80–53A301, Revision 1, dated May 25, 2007, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024).

(3) You may review copies of the service information incorporated by reference at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on June 8, 2008.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–14472 Filed 7–7–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–0395; Directorate Identifier 2007–NM–157–AD; Amendment 39–15588; AD 2008–13–25]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–300 and –400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Boeing Model 737–300 and –400 series airplanes. This AD requires testing and inspecting a certain web panel of the main wheel well pressure deck to determine the material type and thickness; and related investigative and corrective actions if necessary. This AD results from several reports indicating that cracks ranging from 0.8 to 8.0 inches long were found on a certain web panel of the main wheel well pressure deck. We are issuing this AD to prevent fatigue cracking in the web panel of the main wheel well pressure deck, which could result in venting and consequent decompression of the airplane.

DATES: This AD is effective August 12, 2008.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of August 12, 2008.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Wayne Lockett, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6447; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to certain Boeing Model 737–300 and –400 series airplanes. That NPRM was published in the **Federal Register** on January 10, 2008 (73 FR 1846). That NPRM proposed to require testing and inspecting a certain web panel of the main wheel well pressure deck to determine the material type and thickness; and related investigative and corrective actions if necessary.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received.

Request To Change the Description of the Unsafe Condition

Boeing asks that the unsafe condition (end level effect) specified in the applicable sections of the NPRM be changed from ''rapid decompression'' to ''controlled decompression.'' Boeing states that the most probable result of the cracking would be pressure loss or controlled depressurization. Boeing has received reports of cracks ranging from 4.5 to 8 inches in the web panel of the main wheel well pressure deck; the reports included the following data:

- Cabin crews reported a loud hissing noise coming from the area below seats 14A, B, and C. No depressurization was reported.
- The crew reported a loud hissing noise from the cabin lining on the left-hand side at row 15. The cabin windows along the left-hand side progressively frosted up until, after about 2 hours, all the windows were frosted up between rows 11 through 17.
- It was reported that it was not possible to pressurize another airplane.

We partially agree with Boeing. We agree to change the end level effect of the unsafe condition by removing the word ''rapid,'' since Boeing has provided data verifying that the decompression does not happen quickly. However, we do not agree that

the decompression is ''controlled'' because of the safety implications and consequences associated with cracking on a web panel of the main wheel well pressure deck. We have changed the applicable sections in this AD accordingly.

Request To Clarify Certain Compliance Times

Boeing asks that we clarify the different compliance times for replacing discrepant web panels, depending on the thickness, as specified in Table 1 of Part 1.E., Compliance, of Boeing Special Attention Service Bulletin 737–57–1289, dated June 13, 2007. (The service bulletin was referenced in the NPRM as the appropriate source of service information for accomplishing the specified actions.) Boeing states that, as written, paragraphs (g)(1) and (g)(2) of the NPRM would allow 30 months or 6,000 flight cycles, whichever is later, to replace discrepant web panels. Boeing notes that this is acceptable for discrepant web panels with a material thickness that is found to be greater than or equal to 0.037 inch, and less than 0.047 inch; however, for web panels with a material thickness of less than 0.037 inch the specified compliance time is before further flight. Boeing adds that web panels with a material thickness of less than 0.037 inch do not meet the ultimate regulatory load requirements. Boeing also asks that the related investigative and corrective actions be clarified.

We agree with Boeing that some clarification is necessary. Paragraph (g)(1) of the AD requires accomplishing all applicable related investigative and corrective actions before further flight (which includes replacing any discrepant web panels) by doing all the actions specified in the Accomplishment Instructions of the service bulletin. The Accomplishment Instructions do not clearly identify web panels with a material thickness of less than 0.037 inch; however, the web panels are clearly identified in paragraph 1.E. of the service bulletin. Paragraph 1.E. specifies replacing web panels with a material thickness of less than 0.037 inch, as specified in paragraph 3.B.7. of the Accomplishment Instructions of the service bulletin. Therefore, we have clarified paragraph (g)(1) of this AD to add that the corrective actions include replacing any web panel with a material thickness of less than 0.037 inch before further flight. We have also changed paragraph (g)(2) of this AD to clarify that the compliance time in that paragraph is separate from the compliance time specified in paragraph (g)(1). The related investigative and corrective actions are defined in the service information section of the NPRM; therefore, no change is necessary in this regard.

Request To Clarify That Additional Action Is Necessary

Boeing also asks that we change paragraph (e) of the NPRM to clarify that additional action is necessary for operators that inspected web panels using instructions that were contained in Boeing Communication messages that were sent out on January 17, 2006, prior to the release of the referenced service bulletin. Boeing states that the messages were sent to airlines that were operating airplanes that could have a discrepant web panel. Boeing adds that following release of those messages, as part of the information being developed for release in the referenced service bulletin, it was determined that additional details were necessary to accurately define the instructions to inspect for discrepant web panels. Boeing notes that the additional details, which affect both the chemical spot test and the ultrasonic thickness inspections, have been included in the service bulletin referenced in the NPRM as the source of service information for doing the specified actions; therefore, inspections accomplished without these additional steps could result in incorrect identification of discrepant web panels. Boeing also suggests that this language be added to paragraph (e) of the AD.

We acknowledge Boeing's concerns; however, paragraph 1.E, ''Compliance,'' of the referenced service bulletin specifies that the inspection instructions contained in the subject Boeing messages sent out on January 17, 2006, did not include certain steps. That section specifies that the chemical spot test and ultrasonic thickness inspections must be done again by following the procedures in the referenced service bulletin. In addition, paragraph (e) of this AD states that if the actions required by this AD have been done previously, they do not need to be done again. Therefore, we have made no change to the AD in this regard.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We also determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

There are about 31 airplanes of the affected design in the worldwide fleet. This AD affects 1 airplane of U.S. registry. The required tests and inspections take about 3 work hours per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the AD for this U.S. operator is $240.

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

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

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

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

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

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

You can find our regulatory evaluation and the estimated costs of compliance 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:

2008–13–25 Boeing: Amendment 39–15588. Docket No. FAA–2007–0395; Directorate Identifier 2007–NM–157–AD.

Effective Date

(a) This airworthiness directive (AD) is effective August 12, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 737–300 and –400 series airplanes, certificated in any category; as identified in Boeing Special Attention Service Bulletin 737–57–1289, dated June 13, 2007.

Unsafe Condition

(d) This AD results from several reports indicating that cracks ranging from 0.8 to 8.0 inches long were found on a certain web panel of the main wheel well pressure deck. We are issuing this AD to prevent fatigue cracking in the web panel of the main wheel well pressure deck, which could result in venting and consequent decompression 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.

Testing/Inspecting/Investigative and Corrective Actions

(f) Within 6 months after the effective date of this AD: Do a test of the web panel of the main wheel well pressure deck to determine the material type, and do an ultrasonic inspection to determine material thickness, by doing all the applicable actions specified in the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–57–1289, dated June 13, 2007.

(g) For airplanes on which the web thickness or material is found to be discrepant during the test and inspection required by paragraph (f) of this AD, accomplish the applicable actions specified in paragraphs (g)(1) and (g)(2) of this AD at the time specified, in accordance with Boeing Special Attention Service Bulletin 737–57–1289, dated June 13, 2007.

(1) Except as provided by paragraph (h) of this AD: Do all applicable related investigative and corrective actions (including detailed and general visual inspections) before further flight, by doing all the actions specified in the Accomplishment Instructions of the service bulletin. Repeat the inspections thereafter at intervals not to exceed 1,000 flight cycles until the actions required by paragraph (g)(2) of this AD have been done. For any web panel with a material thickness of less than 0.037 inch, replace the web panel before further flight, in accordance with paragraph 3.B.7. of the Accomplishment Instructions of the service bulletin. Doing this replacement ends the repetitive inspections required by this paragraph.

(2) Except as required by paragraph (g)(1) of this AD: Within 30 months or 6,000 flight cycles after accomplishing the actions required by paragraph (g)(1) of this AD, whichever is later, replace the web panel in accordance with the Accomplishment Instructions of the service bulletin. Doing this replacement ends the repetitive inspections required by paragraph (g)(1) of this AD.

Corrective Actions

(h) If any crack or corrosion is found during any inspection required by paragraph (g)(1) of this AD, and Boeing Special Attention Service Bulletin 737–57–1289, dated June 13, 2007, specifies to contact Boeing for repair instructions: Before further flight, repair according to a method approved in accordance with the procedures specified in paragraph (i) of this AD.

Alternative Methods of Compliance (AMOCs)

(i)(1) The Manager, Seattle Aircraft Certification Office (ACO), 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.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

Material Incorporated by Reference

(j) You must use Boeing Special Attention Service Bulletin 737–57–1289, dated June 13, 2007, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

(3) You may review copies of the service information incorporated by reference at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on June 10, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–14475 Filed 7–7–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0409; Directorate Identifier 2007–NM–265–AD; Amendment 39–15587; AD 2008–13–24]

RIN 2120–AA64

Airworthiness Directives; ATR Model ATR42 Airplanes and Model ATR72–101, –102, –201, –202, –211, and –212 Airplanes

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

ACTION: Final rule.

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

It has been found on in-service aircraft that some aileron tab bellcrank assemblies were not in accordance with the definition drawings.

The main item concerned is the retainer Part Number S2711004620000, which has been manufactured with a hole larger than it should be, or redrilled out of limits.

The function of the retainer is to maintain the spacer in position in case of rupture or loss of the bolt which links the tab control rod to the bellcrank assembly. If the diameter of the retainer hole is out of limit, the retainer function is lost and fail-safe installation is no longer ensured. This condition, if not corrected, could lead to loss of the aileron tab bellcrank functionality, resulting in diminished control of the aircraft.

* * * * *

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

DATES: This AD becomes effective August 12, 2008.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of August 12, 2008.

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

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

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on April 11, 2008 (73 FR 19768). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> It has been found on in-service aircraft that some aileron tab bellcrank assemblies were not in accordance with the definition drawings.
>
> The main item concerned is the retainer Part Number S2711004620000, which has been manufactured with a hole larger than it should be, or redrilled out of limits.
>
> The function of the retainer is to maintain the spacer in position in case of rupture or loss of the bolt which links the tab control rod to the bellcrank assembly. If the diameter of the retainer hole is out of limit, the retainer function is lost and fail-safe installation is no longer ensured. This condition, if not corrected, could lead to loss of the aileron tab bellcrank functionality, resulting in diminished control of the aircraft.
>
> For the reasons stated above, this Airworthiness Directive (AD) requires the inspection [for proper hole diameter] of the aileron tab bellcrank retainer and, if necessary, the restoration of a proper installation [replacing any retainer which does not meet specified limits with a new retainer].

Corrective actions also include doing a general visual inspection (GVI) for discrepancies (corrosion, deformation, scratches, or other defects) of the bolt and fasteners of the bellcrank assembly. You may obtain further information by examining the MCAI in the AD docket.

Comments

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

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect about 51 products of U.S. registry. We also estimate that it will take about 2 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $8,160, or $160 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2008–13–24 ATR—GIE Avions de Transport Régional (Formerly Aerospatiale): Amendment 39–15587. Docket No. FAA–2008–0409; Directorate Identifier 2007–NM–265–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective August 12, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to ATR Model ATR42 airplanes, certificated in any category, all models, all serial numbers, except airplanes which have received ATR modification 04372 (aileron spring tab) in production or ATR Service Bulletin ATR42–27–0081 or Service Bulletin ATR42–27–0092 in service; and ATR Model ATR72–101, –102, –201, –202, –211, and –212 airplanes, certificated in any category, all serial numbers, except airplanes which have received ATR modification 04373 (aileron spring tab) in production or ATR Service Bulletin ATR72–27–1045 in service.

Subject

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

Reason

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

It has been found on in-service aircraft that some aileron tab bellcrank assemblies were not in accordance with the definition drawings.

The main item concerned is the retainer Part Number S2711004620000, which has been manufactured with a hole larger than it should be, or redrilled out of limits.

The function of the retainer is to maintain the spacer in position in case of rupture or loss of the bolt which links the tab control rod to the bellcrank assembly. If the diameter of the retainer hole is out of limit, the retainer function is lost and fail-safe installation is no longer ensured. This condition, if not corrected, could lead to loss of the aileron tab bellcrank functionality, resulting in diminished control of the aircraft.

For the reasons stated above, this Airworthiness Directive (AD) requires the inspection [for proper hole diameter] of the aileron tab bellcrank retainer and, if necessary, the restoration of a proper installation [replacing any retainer which does not meet specified limits with a new retainer].

Corrective actions also include doing a general visual inspection (GVI) for discrepancies (corrosion, deformation, scratches, or other defects) of the bolt and fasteners of the bellcrank assembly.

Actions and Compliance

(f) Within 90 days after the effective date of this AD, unless already done, do the following actions.

(1) Measure the hole diameter of the retainer of the aileron automatic tab bellcrank assembly, in accordance with the Accomplishment Instructions of Avions de Transport Regional Service Bulletin ATR42–27–0098 or ATR72–27–1060, both dated December 19, 2006, as applicable. If the hole diameter is within specified limits, no further actions are required by paragraph (f) of this AD for that retainer.

(2) If any retainer exceeds the hole diameter limits specified in Avions de Transport Regional Service Bulletin ATR42–27–0098 or ATR72–27–1060, both dated December 19, 2006, as applicable, before further flight, replace the retainer with a retainer that meets hole diameter limits, in accordance with the Accomplishment Instructions of the applicable service bulletin. For any airplane for which a replacement retainer is not available, before further flight, do a GVI for discrepancies of the bolt and fasteners of the bellcrank assembly. If any discrepancies of the bolt and fasteners are found, replace the retainer before further flight, in accordance with the Accomplishment Instructions of the applicable service bulletin. If no discrepancies are found, replace the retainer no later than 2 flight days after the hole measurement, in accordance with the Accomplishment Instructions of the applicable service bulletin.

Note 1: For the purposes of this AD, a GVI 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.''

FAA AD Differences

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

Other FAA AD Provisions

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

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

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

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

Related Information

(h) Refer to MCAI European Aviation Safety Agency (EASA) Airworthiness Directive 2006–0376, dated December 19, 2006; and Avions de Transport Regional Service Bulletins ATR42–27–0098 and ATR72–27–1060, both dated December 19, 2006; for related information.

Material Incorporated by Reference

(i) You must use Avions de Transport Regional Service Bulletin ATR42–27–0098, dated December 19, 2006; or Avions de Transport Regional Service Bulletin ATR72–27–1060, dated December 19, 2006; as applicable; to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact ATR, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France.

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

Issued in Renton, Washington, on June 10, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–14477 Filed 7–7–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0536; Directorate Identifier 2008–CE–030–AD; Amendment 39–15595; AD 2008–13–32]

RIN 2120–AA64

Airworthiness Directives; APEX Aircraft Model CAP 10B Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of

another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

> It has been determined that the currently used values for Arms of front and rear fuel tanks, and luggage compartment from the CAP 10B Airplane Flight Manuals (AFM), must be rectified.
>
> If left uncorrected, these weight and balance data could lead to erroneous determination of the location of the Center of Gravity (CG) and possibly cause operation with the CG outside the approved limits which may result in control difficulty.

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

DATES: This AD becomes effective August 12, 2008.

On August 12, 2008, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

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

FOR FURTHER INFORMATION CONTACT: Sarjapur Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4145; fax: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on May 9, 2008 (73 FR 26351). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> It has been determined that the currently used values for Arms of front and rear fuel tanks, and luggage compartment from the CAP 10B Airplane Flight Manuals (AFM), must be rectified.
>
> If left uncorrected, these weight and balance data could lead to erroneous determination of the location of the Center of Gravity (CG) and possibly cause operation with the CG outside the approved limits which may result in control difficulty.
>
> To prevent this condition, the present Airworthiness Directive (AD) mandates revision of the AFM which introduces the corrected values and replaces the previous loading graphs by loading tables.

Comments

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

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect 31 products of U.S. registry. We also estimate that it will take about 1 work-hour per product to comply with basic requirements of this AD. The average labor rate is $80 per work-hour.

Based on these figures, we estimate the cost of this AD to the U.S. operators to be to be $2,480, or $80 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2008–13–32 APEX Aircraft: Amendment 39–15595; Docket No. FAA–2008–0536; Directorate Identifier 2008–CE–030–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective August 12, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to CAP 10B airplanes, all serial numbers up to and including 282, certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 08: Leveling and Weighing.

Reason

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

It has been determined that the currently used values for Arms of front and rear fuel tanks, and luggage compartment from the CAP 10B Airplane Flight Manuals (AFM), must be rectified.

If left uncorrected, these weight and balance data could lead to erroneous determination of the location of the Center of Gravity (CG) and possibly cause operation with the CG outside the approved limits which may result in control difficulty.

To prevent this condition, the present Airworthiness Directive (AD) mandates revision of the AFM which introduces the corrected values and replaces the previous loading graphs by loading tables.

Actions and Compliance

(f) Unless already done, within the next 50 hours time-in-service (TIS) after August 12, 2008 (the effective date of this AD), incorporate Apex Aircraft AVION CAP 10B Document Number 1000977 GB, Revision 8, dated February 2007 into the limitations section of the airplane flight manual as specified in APEX Aircraft Service Bulletin No. 030502, dated April 11, 2008. The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations 14 CFR 43.7 may do this action. Make an entry in the aircraft records showing compliance with this portion of the AD following 14 CFR 43.9.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) Alternative Methods of Compliance (AMOCs): The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Sarjapur Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4145; fax: (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Related Information

(h) Refer to MCAI European Aviation Safety Agency (EASA) AD No. 2008–0071, dated April 15, 2008; and APEX Aircraft Service Bulletin No. 030502, dated April 11, 2008, for related information.

Material Incorporated by Reference

(i) You must use APEX Aircraft Service Bulletin No. 030502, dated April 11, 2008, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Apex Aircraft, Bureau de Navigabilité, 1 route de Troyes, 21121 DAROIS, France.

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

Issued in Kansas City, Missouri, on June 19, 2008.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–14484 Filed 7–7–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0272; Directorate Identifier 2007–NM–275–AD; Amendment 39–15594; AD 2008–13–31]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Falcon 2000 Airplanes

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

ACTION: Final rule.

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

In service events have shown that, after implementation of Dassault Aviation SB (service bulletin) F2000–133 and F2000–166, a risk of engine cowlings separation from the airplane still exists, and may cause potential damages to the engine itself and to the horizontal stabilizer.

It is suspected that on-ground improper latching may lead to a radial deformation of engine cowlings in flight and to their eventual escape out of their locking devices. This situation may represent a hazard to the aircraft propulsive system and/or its structural integrity.

* * * * *

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

DATES: This AD becomes effective August 12, 2008.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of August 12, 2008.

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

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

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on March 13, 2008 (73 FR 13511). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

In service events have shown that, after implementation of Dassault Aviation SB (service bulletin) F2000–133 and F2000–166, a risk of engine cowlings separation from the airplane still exists, and may cause potential damages to the engine itself and to the horizontal stabilizer.

It is suspected that on-ground improper latching may lead to a radial deformation of engine cowlings in flight and to their eventual escape out of their locking devices.

This situation may represent a hazard to the aircraft propulsive system and/or its structural integrity.

The purpose of this Airworthiness Directive (AD) is to secure safe closure of engine cowlings and improve the existing locking devices.

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

Comments

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

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect about 229 products of U.S. registry. We also estimate that it will take about 90 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Required parts will cost about $0 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $1,648,800, or $7,200 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2008–13–31 Dassault Aviation: Amendment 39–15594. Docket No. FAA–2008–0272; Directorate Identifier 2007–NM–275–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective August 12, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Dassault Model Falcon 2000 airplanes, certificated in any category, all serial numbers, except those that have incorporated Modification M2275 during production or Dassault Service Bulletin F2000–298 in service.

Subject

(d) Air Transport Association (ATA) of America Code 54: Nacelles/Pylons.

Reason

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

In service events have shown that, after implementation of Dassault Aviation SB (service bulletin) F2000–133 and F2000–166, a risk of engine cowlings separation from the airplane still exists, and may cause potential damages to the engine itself and to the horizontal stabilizer.

It is suspected that on-ground improper latching may lead to a radial deformation of engine cowlings in flight and to their eventual escape out of their locking devices. This situation may represent a hazard to the aircraft propulsive system and/or its structural integrity.

The purpose of this Airworthiness Directive (AD) is to secure safe closure of engine cowlings and improve the existing locking devices.

Actions and Compliance

(f) Within 12 months after the effective date of this AD unless already done, do the following actions.

(1) Modify the existing engine cowls locking system in accordance with the instructions contained in Dassault Service Bulletin F2000–298, Revision 3, dated September 26, 2007.

(2) Before or concurrent with the modification required by paragraph (f)(1) of this AD, modify the engine cowling attachments in accordance with the instructions contained in Dassault Service Bulletin F2000–166, Revision 1, dated October 24, 2001 (Modification M1579).

(3) Actions done before the effective date of this AD in accordance with Dassault Service Bulletins F2000–298, Revision 1,

dated October 31, 2006, or Revision 2, dated April 12, 2007; and F2000–166, dated June 27, 2001; are acceptable for compliance with the corresponding actions of this AD.

FAA AD Differences

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

Other FAA AD Provisions

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

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

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

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

Related Information

(h) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2007–0016, dated January 12, 2007; and Dassault Service Bulletins F2000–166, Revision 1, dated October 24, 2001; and F2000–298, Revision 3, dated September 26, 2007; for related information.

Material Incorporated by Reference

(i) You must use Dassault Service Bulletin F2000–166, Revision 1, dated October 24, 2001; and Dassault Service Bulletin F2000–298, Revision 3, dated September 26, 2007; to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606.

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

Issued in Renton, Washington, on June 8, 2008.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–14579 Filed 7–7–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0673; Directorate Identifier 2008–NM–117–AD; Amendment 39–15606; AD 2008–14–11]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777–200, –200LR, –300, and –300ER Series Airplanes Approved for Extended-Range Twin-Engine Operational Performance Standards (ETOPS)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Boeing Model 777–200, –200LR, –300, and –300ER series airplanes. This AD requires a one-time inspection to determine the part number of the cargo compartment fire suppression filter/regulator. This AD also requires, for certain airplanes, a revision of the ''Maximum Diversion Time in Minutes'' for ETOPS operation specified in the Operations Specifications. For certain airplanes, this AD also provides for optional replacement of the cargo compartment fire suppression filter/regulator, which would allow revision of the ''Maximum Diversion Time in Minutes'' for ETOPS operation specified in the Operations Specifications to restore the airplane's full ETOPS capability. This AD results from a report that the filter/regulator installed in the cargo fire suppression system did not meter the Halon for the certified duration during ETOPS flight tests. We are issuing this AD to prevent ETOPS operation with insufficient cargo fire suppression capability, which could result in an uncontained fire in the cargo compartment.

DATES: This AD is effective July 23, 2008.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of July 23, 2008.

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

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

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

For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Robert Hettman, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6457; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

This AD results from a report that the filter/regulator installed in the cargo fire suppression system did not meter the Halon for the certified duration during extended-range twin-engine operational performance standards (ETOPS) flight tests conducted by Boeing. Results of an investigation by the filter/regulator supplier, Kidde Aerospace, showed that an incorrect test adapter was used during the calibration procedure to set the filter/regulator flow rate. The incorrect test adapter affected the calibrated flow rate setting, allowing the Halon to flow too fast, resulting in less cargo fire suppression duration. It is

uncertain how many cargo compartment fire suppression filters/regulators were delivered with the incorrect calibration. To date, we have received no reports of in-service events related to this issue.

ETOPS operation with insufficient cargo fire suppression capability, if not corrected, could result in an uncontained fire in the cargo compartment.

Relevant Service Information

We reviewed Boeing Special Attention Service Bulletin 777–26–0044, dated April 24, 2008; and Revision 1, dated June 19, 2008 (for Model 777–200, –300, and –300ER series airplanes). The service bulletins describe procedures for replacing the fire suppression filter/regulator with a new filter/regulator, which restores the fire suppression capability to the certified duration and allows the operator to resume flights at the airplane's full ETOPS capability.

FAA's Determination and Requirements of This AD

We are issuing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the(se) same type design(s). This AD requires a one-time inspection to determine the part number of the cargo compartment fire suppression filter/regulator. This AD also requires, for certain airplanes, a revision of the ''Maximum Diversion Time in Minutes'' for ETOPS operation specified in the Operations Specifications. For certain airplanes, this AD also provides for optional replacement of the cargo compartment fire suppression filter/regulator, which would allow revision of the ''Maximum Diversion Time in Minutes'' for ETOPS operation specified in the Operations Specifications to restore the airplane's full ETOPS capability.

FAA's Justification and Determination of the Effective Date

An uncontained fire in the cargo compartment, especially during an ETOPS flight where alternate airports may not be available, is a critical safety risk. Because of our requirement to promote safe flight of civil aircraft and thus, the critical need to assure the proper functioning of the fire suppression system in the cargo compartment and the short compliance time involved with this action, this AD must be issued immediately.

Because an unsafe condition exists that requires the immediate adoption of this AD, we find that notice and opportunity for prior public comment hereon are impracticable and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments before it becomes effective. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0673; Directorate Identifier 2008–NM–117–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

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

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

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

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

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

You can find our regulatory evaluation and the estimated costs of compliance 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:

2008–14–11 Boeing: Amendment 39–15606. Docket No. FAA–2008–0673; Directorate Identifier 2008–NM–117–AD.

Effective Date

(a) This airworthiness directive (AD) is effective July 23, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 777–200, –200LR, –300, and –300ER series airplanes, certificated in any category; approved for extended-range twin-engine operational performance standards (ETOPS).

Unsafe Condition

(d) This AD results from a report that the filter/regulator installed in the cargo fire suppression system did not meter the Halon for the certified duration during ETOPS flight tests. We are issuing this AD to prevent ETOPS operation with insufficient cargo fire suppression capability, which could result in an uncontained fire in the cargo compartment.

Compliance

(e) Comply with this AD within the compliance times specified, unless already done.

Inspection To Determine Part Number of the Filter/Regulator

(f) Within 30 days after the effective date of this AD, inspect the filter/regulator for the

fire suppression system in the lower cargo compartment to determine whether a Kidde Aerospace filter/regulator having a part number identified in Table 1 of this AD is installed. A review of airplane maintenance records is acceptable in lieu of this inspection if the part number of the filter/regulator can be conclusively determined from that review.

TABLE 1.—APPLICABLE KIDDE AEROSPACE FILTERS/REGULATORS

Model	Filter/Regulator Part No.
(1) 777–200 and –200LR series airplanes	473494–1, –2, or –3; or 473995–1, –2, or –3.
(2) 777–300 and 777–300ER series airplanes	473857–1, –2, or –3.

Revision of the Operations Specifications

(g) Except as provided in paragraph (i) of this AD, if a Kidde Aerospace cargo compartment fire suppression filter/regulator identified in Table 1 of this AD is found installed during the inspection or records check required by paragraph (f) of this AD: Before further flight after doing the inspection or records check required by paragraph (f) of this AD, revise the ''Maximum Diversion Time In Minutes,'' specified in the FAA-approved Operations Specifications, Document D086, in accordance with the applicable instructions contained in Boeing Model 777 ETOPS Configuration, Maintenance, and Procedures, Document D044W054, Revision K, dated June 12, 2008.

Optional Replacement of the Filter/Regulator for Certain Airplanes

(h) For Model 777–200, –300, and –300ER series airplanes: Once the cargo compartment fire suppression filter/regulator has been replaced with a new or serviceable filter/regulator in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–26–0044, dated April 24, 2008; or Revision 1, dated June 19, 2008; the ''Maximum Diversion Time In Minutes,'' specified in the FAA-approved Operations Specifications, Document D086, may be revised in accordance with the applicable instructions contained in Boeing Model 777 ETOPS Configuration, Maintenance, and Procedures, Document D044W054, Revision K, dated June 12, 2008, to restore the airplane's full ETOPS capability.

Exception to Operations Specifications Revision

(i) The revision to the Operations Specifications specified in paragraph (g) of this AD is not required if, before further flight after a Kidde Aerospace cargo compartment fire suppression filter/regulator identified in Table 1 of this AD is found installed on any airplane, the filter/regulator replacement described in paragraph (h) of this AD is accomplished.

Alternative Methods of Compliance (AMOCs)

(j)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, ATTN: Robert Hettman, Cabin Safety and Environmental Systems Branch, ANM–150S, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6457; fax (425) 917–6590; has the authority to approve AMOCs for this AD, if requested using 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.

Material Incorporated by Reference

(k) You must use Boeing Model 777 ETOPS Configuration, Maintenance, and Procedures, Document D044W054, Revision K, dated June 12, 2008, to do the actions required by this AD, unless the AD specifies otherwise. If you accomplish the optional actions specified by this AD, you must use Boeing Special Attention Service Bulletin 777–26–0044, dated April 24, 2008; or Boeing Special Attention Service Bulletin 777–26–0044, Revision 1, dated June 19, 2008; as applicable; to do those actions, unless the AD specifies otherwise. (The revision date of Boeing Model 777 ETOPS Configuration, Maintenance, and Procedures, Document D044W054, Revision K, is located on the last page of the document; no other page of this document contains the revision date.)

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

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

(3) You may review copies of the service information incorporated by reference at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on June 25, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–15371 Filed 7–7–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–0266; Directorate Identifier 2007–NM–170–AD; Amendment 39–15576; AD 2008–13–13]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330 Airplanes and Model A340–200 and –300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Airbus Model A330 airplanes and Model A340–200 and –300 series airplanes. This AD requires revising the airplane flight manual (AFM) to prohibit the flightcrew from performing CAT 2 and CAT 3 automatic landings and roll-outs at certain airports. This AD also provides an optional terminating action for the AFM revision. This AD results from data showing that the magnetic variation table installed in certain Honeywell and Northrop Grumman air data inertial reference units (ADIRUs) is obsolete at certain airports. We are issuing this AD to prevent the airplane from departing the runway during a CAT 2 or CAT 3 automatic landing or roll-out, due to differences between actual magnetic variation and the values in the ADIRU magnetic variation tables.

DATES: This AD is effective August 12, 2008.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of August 12, 2008.

ADDRESSES: For service information identified in this AD, contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through

Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2797; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to certain Airbus Model A330 series airplanes and Model A340–200 and –300 series airplanes. That NPRM was published in the **Federal Register** on December 3, 2007 (72 FR 67868). That NPRM proposed to require revising the airplane flight manual (AFM) to prohibit the flightcrew from performing CAT 2 and CAT 3 automatic landings and roll-outs at certain airports. That NPRM also proposed to provide an optional terminating action for the AFM revision.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comment received from the commenter.

Request To Refer to Additional Service Information

Mr. Jean-Dominique Bouton states that the ''Optional Terminating Action'' paragraph does not include the latest air data inertial reference unit (ADIRU) standards, which can be installed in place of the older standards addressed by the NPRM. The commenter identifies the following service bulletins as optional terminating actions to the AFM revision: Airbus Service Bulletin A330–34–3183, dated June 16, 2006; Airbus Service Bulletin A330–34–3191, dated March 16, 2007; Airbus Service Bulletin A340–34–4173, dated June 16, 2006; and Airbus Service Bulletin A340–34–4180, dated March 16, 2007. As justification, the commenter states that these service bulletins include the latest ADIRU standards, which can be installed in place of the older standards addressed by this AD.

We infer the commenter requests that we revise paragraph (i) of this AD by including the service bulletins identified above. We agree to add Airbus Service Bulletin A330–34–3183 to paragraph (i)(2) of this AD, and Airbus Service Bulletin A340–34–4173 to paragraph (i)(4) of this AD. Airbus Service Bulletin A330–34–3183 incorporates a later ADIRU standard than the one specified in Airbus Service Bulletin A330–34–3159, dated February 10, 2005, which is identified as a terminating action in paragraph (i)(2) of this AD. Airbus Service Bulletin A340–34–4173 also incorporates a later ADIRU standard than the one specified in Airbus Service Bulletin A340–34–4163, dated February 10, 2005, which is identified as a terminating action in paragraph (i)(4) of this AD. The later ADIRU standard builds on the earlier standard and introduces general improvements and a new magnetic variation table. The service bulletin for the later ADIRU standard has the earlier service bulletin as a concurrent requirement.

However, we do not agree to add Airbus Service Bulletin A330–34–3191 and Airbus Service Bulletin A340–34–4180 to paragraph (i) of this AD because those service bulletins do not have the service bulletin for the earlier standard as a concurrent requirement. We refer to European Aviation Safety Agency airworthiness directive 2006–0232, dated August 7, 2006, as related information in paragraph (k) of this AD. However, under the provisions of paragraph (j) of this AD, we will consider requests for approval of an alternative method of compliance if sufficient data are submitted to substantiate that the design change would provide an acceptable level of safety. We have not changed this AD in this regard.

Conclusion

We reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting the AD with the change described previously. We also determined that this change will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

This AD affects about 40 airplanes of U.S. registry. The required actions take about 1 work hour per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the AD for U.S. operators is $3,200, or $80 per airplane.

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

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

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

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

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

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

You can find our regulatory evaluation and the estimated costs of compliance 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:

2008–13–13 Airbus: Amendment 39–15576. Docket No. FAA–2007–0266; Directorate Identifier 2007–NM–170–AD.

Effective Date

(a) This airworthiness directive (AD) is effective August 12, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A330–200, A330–300, A340–200, and A340–300 series airplanes, certificated in any category; equipped with the air data inertial reference units (ADIRUs) identified in paragraphs (c)(1) and (c)(2) of this AD.

(1) Honeywell ADIRUs having part numbers (P/Ns) HG2030AC0X (where X is any number between 0 and 9 inclusive) and P/Ns HG2030ADYY (where YY is any number between 00 and 10 inclusive).

(2) Northrop Grumman (formerly Litton) ADIRUs having P/Ns 465020–030303ZZ (where ZZ is any number between 00 and 12 inclusive).

Unsafe Condition

(d) This AD results from data showing that the magnetic variation table installed in certain Honeywell and Northrop Grumman ADIRUs is obsolete at certain airports. We are issuing this AD to prevent the airplane from departing the runway during a CAT 2 or CAT 3 automatic landing or roll-out, due to differences between actual magnetic variation and the values in the ADIRU magnetic variation tables.

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.

Temporary Revision (TR) References

(f) The term ''Temporary Revision,'' as used in this AD, means the following TRs, as applicable:

(1) For Model A330–200 and A330–300 series airplanes equipped with any Honeywell ADIRU identified in paragraph (c)(1) of this AD: Airbus TR 2.05.00/67, Issue 2, dated September 19, 2007, to the Airbus A330 Airplane Flight Manual (AFM);

(2) For Model A330–200 and A330–300 series airplanes equipped with any Northrop Grumman ADIRU identified in paragraph (c)(2) of this AD: Airbus TR 2.05.00/68, dated March 31, 2006, to the Airbus A330 AFM;

(3) For Model A340–200 and A340–300 series airplanes equipped with any Honeywell ADIRU identified in paragraph (c)(1) of this AD: Airbus TR 2.05.00/87, Issue 2, dated September 19, 2007, to the Airbus A340 AFM; and

(4) For Model A340–200 and A340–300 series airplanes equipped with any Northrop Grumman ADIRU identified in paragraph (c)(2) of this AD: Airbus TR 2.05.00/88, dated March 31, 2006, to the Airbus A340 AFM.

AFM Revision

(g) Within 14 days after the effective date of this AD, revise the Limitations Section of the Airbus A330 or A340 AFM, as applicable, to prohibit the flightcrew from performing CAT 2 and CAT 3 automatic landings and roll-outs at certain airports by incorporating the applicable Temporary Revision into the AFM. Operate the airplane according to the limitations in the applicable TR.

(h) When the information in the applicable TR has been incorporated into the general revisions of the Airbus A330 or A340 AFM, as applicable, the general revisions may be inserted into the AFM, and the TR may be removed from the AFM.

Optional Terminating Action

(i) Replacing the ADIRUs with new, improved ADIRUs as specified in paragraph (i)(1), (i)(2), (i)(3), or (i)(4) of this AD terminates the AFM revision required by paragraph (g) of this AD.

(1) For Model A330–200 and A330–300 series airplanes equipped with any Honeywell ADIRU identified in paragraph (c)(1) of this AD, doing the replacement in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–34–3104, dated July 17, 2003; or Airbus Service Bulletin A330–34–3165, dated June 28, 2006.

(2) For Model A330–200 and A330–300 series airplanes equipped with any Northrop Grumman ADIRU identified in paragraph (c)(2) of this AD, doing the replacement in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–34–3132, dated December 16, 2003, or Revision 01, dated August 18, 2004; Airbus Service Bulletin A330–34–3159, dated February 10, 2005; or Airbus Service Bulletin A330–34–3183, dated June 16, 2006.

(3) For Model A340–200 and A340–300 series airplanes equipped with any Honeywell ADIRU identified in paragraph (c)(1) of this AD, doing the replacement in accordance with the Accomplishment Instructions of Airbus Service Bulletin A340–34–4114, dated July 17, 2003; or Airbus Service Bulletin A340–34–4166, dated June 28, 2006.

(4) For Model A340–200 and A340–300 series airplanes equipped with any Northrop Grumman ADIRU identified in paragraph (c)(2) of this AD, doing the replacement in accordance with the Accomplishment Instructions of Airbus Service Bulletin A340–34–4141, dated December 16, 2003, or Revision 01, dated August 18, 2004; Airbus Service Bulletin A340–34–4163, dated February 10, 2005; or Airbus Service Bulletin A340–34–4173, dated June 16, 2006.

Alternative Methods of Compliance (AMOCs)

(j)(1) The Manager, International Branch, ANM–116, Transport Airplane Directorate, 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.

Related Information

(k) European Aviation Safety Agency airworthiness directive 2006–0232, dated August 7, 2006, also addresses the subject of this AD.

Material Incorporated by Reference

(l) You must use the applicable service information contained in Table 1 of this AD to do the actions required by this AD, unless the AD specifies otherwise. If you do the optional actions specified in this AD, you must use the applicable service information contained in Table 2 of this AD to do those actions, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France.

(3) You may review copies of the service information incorporated by reference at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

TABLE 1.—MATERIAL INCORPORATED BY REFERENCE FOR REQUIRED ACTIONS

Service Information	Issue	Date
Airbus Temporary Revision 2.05.00/67 to the Airbus A330 Airplane Flight Manual	2	September 19, 2007.
Airbus Temporary Revision 2.05.00/68 to the Airbus A330 Airplane Flight Manual	Original	March 31, 2006.
Airbus Temporary Revision 2.05.00/87 to the Airbus A340 Airplane Flight Manual	2	September 19, 2007.
Airbus Temporary Revision 2.05.00/88 to the Airbus A340 Airplane Flight Manual	Original	March 31, 2006.

TABLE 2.—MATERIAL INCORPORATED BY REFERENCE FOR OPTIONAL ACTIONS

Service Information	Issue	Date
Airbus Service Bulletin A330–34–3104	Original	July 17, 2003.
Airbus Service Bulletin A330–34–3132	Original	December 16, 2003.
Airbus Service Bulletin A330–34–3132	01	August 18, 2004.
Airbus Service Bulletin A330–34–3159	Original	February 10, 2005.
Airbus Service Bulletin A330–34–3165	Original	June 28, 2006.
Airbus Service Bulletin A330–34–3183	Original	June 16, 2006.
Airbus Service Bulletin A340–34–4114	Original	July 17, 2003.
Airbus Service Bulletin A340–34–4141	Original	December 16, 2003.
Airbus Service Bulletin A340–34–4141	01	August 18, 2004.
Airbus Service Bulletin A340–34–4163	Original	February 10, 2005.
Airbus Service Bulletin A340–34–4166	Original	June 28, 2006.
Airbus Service Bulletin A340–34–4173	Original	June 16, 2006.

Issued in Renton, Washington, on June 13, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–14468 Filed 7–7–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0299; Directorate Identifier 2007–NM–254–AD; Amendment 39–15593; AD 2008–13–30]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Aerospace LP Model Astra SPX, 1125 Westwind Astra, and Gulfstream 100 Airplanes

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

ACTION: Final rule.

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

Two of the fasteners used to attach the ''scissors'' to the horizontal and the vertical stabilizers were found broken during routine maintenance. The highest loads on the ''scissors'' occur when using high reverse thrust. Therefore, the reverse thrust must be limited to idle in order to keep the loads at a sufficiently low level to preclude any structural problem. * * *

Failure of the attachment fasteners could result in possible in-flight loss of a horizontal or vertical stabilizer and consequent loss of control of the airplane. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective August 12, 2008.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of August 12, 2008.

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

FOR FURTHER INFORMATION CONTACT: Mike Borfitz, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2677; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on March 14, 2008 (73 FR 13800). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

Two of the fasteners used to attach the ''scissors'' to the horizontal and the vertical stabilizers were found broken during routine maintenance. The highest loads on the ''scissors'' occur when using high reverse thrust. Therefore, the reverse thrust must be limited to idle in order to keep the loads at a sufficiently low level to preclude any structural problem. It was established that on model 1125 Astra, alternate fasteners of inferior strength were sometimes installed. When the originally specified fasteners are installed, the limitations on reverse thrust used may be lifted. For models Astra SPX and G100, however, the limitation remains in effect till further revision of this AD.

Failure of the attachment fasteners could result in possible in-flight loss of a horizontal or vertical stabilizer and consequent loss of control of the airplane. Corrective actions include revising the airplane flight manual (AFM); inspections for damage of the bolts and replacing the bolt, if necessary; and doing related investigative and other corrective actions (eddy current inspection for bolt hole diameter and damage, contact Gulfstream for repair and do repair). You may obtain further information by examining the MCAI in the AD docket.

Comments

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

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect about 129 products of U.S. registry. We also estimate that it will take about 10

work-hours per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Required parts will cost about $33 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $107,457, or $833 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2008–13–30 Gulfstream Aerospace LP (Formerly Israel Aircraft Industries, Ltd.): Amendment 39–15593. Docket No. FAA–2008–0299; Directorate Identifier 2007–NM–254–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective August 12, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Gulfstream Aerospace LP Model Astra SPX, 1125 Westwind Astra, and Gulfstream 100 airplanes; certificated in any category; serial numbers 004 through 158.

Subject

(d) Air Transport Association (ATA) of America Code 55: Stabilizers.

Reason

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

Two of the fasteners used to attach the ''scissors'' to the horizontal and the vertical stabilizers were found broken during routine maintenance. The highest loads on the ''scissors'' occur when using high reverse thrust. Therefore, the reverse thrust must be limited to idle in order to keep the loads at a sufficiently low level to preclude any structural problem. It was established that on model 1125 Astra, alternate fasteners of inferior strength were sometimes installed. When the originally specified fasteners are installed, the limitations on reverse thrust used may be lifted. For models Astra SPX and G100, however, the limitation remains in effect till further revision of this AD.

Failure of the attachment fasteners could result in possible in-flight loss of a horizontal or vertical stabilizer and consequent loss of control of the airplane. Corrective actions include revising the airplane flight manual (AFM); inspections for damage of the bolts and replacing the bolt, if necessary; and doing related investigative and other corrective actions (eddy current inspection for bolt hole diameter and damage, contact Gulfstream for repair and do repair).

Actions and Compliance

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

(1) Within 30 days after the effective date of this AD: Revise the Limitations section of the AFM by incorporating the information in the applicable Israel Aircraft Industries (Gulfstream) temporary revisions (TR): Astra AFM TR 15; Astra SPX AFM TR 8; or Gulfstream 100 AFM TR 1; all dated June 14, 2007; into the Limitations section of the Gulfstream Astra, Astra SPX, or Gulfstream 100 AFM, as applicable. The TRs limit the normal use of reverse thrust to idle.

Note 1: The actions required by paragraph (f) of this AD may be done by inserting a copy of Israel Aircraft Industries (Gulfstream) Astra AFM TR 15; Astra SPX AFM TR 8; or Gulfstream 100 AFM TR 1; all dated June 14, 2007; as applicable; into the Limitations section of the Gulfstream Astra, Astra SPX, or Gulfstream 100 AFM, as applicable. When the applicable TR has been included in the general revisions of the applicable AFM, the general revisions may be inserted in the AFM.

(2) *For all airplanes:* Within 25 flight hours or 30 days after the effective date of this AD, whichever comes first, do the inspections specified in paragraphs (f)(2)(i) and (f)(2)(ii) of this AD in accordance with Part A of Gulfstream Alert Service Bulletin 100–55A–293, dated June 22, 2007.

(i) Visually inspect the attachment bolts and replace any damaged bolt before further flight.

(ii) Perform a detailed visual inspection of fittings with part number (P/N) 25W357222–501–51, and fillers with P/N 25W4011001–003, and surrounding structure for damage. If blind bolts with P/N MS21141U0612 are installed and no damage is found, no further action is required. If any damage is found, before further flight, repair using a method approved in accordance with the procedures specified in paragraph (g)(2) of this AD. If any bolt with P/N AN173C11 is installed and damage is found, replace the bolt and do all related investigative and applicable corrective actions before further flight.

(3) For Model 1125 Westwind Astra airplanes (serial numbers 004, 011 through 072 inclusive, and 073 through 078 inclusive): Within 12 months after the effective date of this AD, replace all P/N AN173C11 bolts, and do all related investigative and applicable corrective

actions before further flight, as detailed in Part B of Gulfstream Alert Service Bulletin 100–55A–293, dated June 22, 2007. Accomplishment of Part B of the alert service bulletin constitutes terminating action for paragraph (f)(1) of this AD. Israel Aircraft Industries (Gulfstream) TR 15 may be deleted and unlimited use of reverse thrust is allowed per the Gulfstream Astra AFM.

Note 2: Reverse thrust limitations remain in effect for Model Astra SPX and Gulfstream 100 airplanes.

FAA AD Differences

Note 3: This AD differs from the MCAI and/or service information as follows:

Compliance Time: The compliance time required by the MCAI or service information for performing the AFM revision is immediate on receipt of this AD; however, to avoid inadvertently grounding airplanes, this AD requires performing the AFM revision within 30 days after the effective date of this AD.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Mike Borfitz, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2677; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Related Information

(h) Refer to MCAI Israeli Airworthiness Directive 55–07–06–07R1, dated June 26, 2007; Gulfstream Alert Service Bulletin 100–55A–293, dated June 22, 2007; and Israel Aircraft Industries (Gulfstream) Astra SPX AFM TR 8, Astra AFM TR 15, and Gulfstream 100 AFM TR 1, all dated June 14, 2007; for related information.

Material Incorporated by Reference

(i) You must use Gulfstream Alert Service Bulletin 100–55A–293, dated June 22, 2007, and the temporary revisions specified in Table 1 of this AD, as applicable, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Gulfstream Aerospace Corporation, P.O. Box 2206, Mail Station D–25, Savannah, Georgia 31402–2206.

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

TABLE 1.—TEMPORARY REVISIONS INCORPORATED BY REFERENCE

Israel Aircraft Industries (Gulfstream)	Dated	To the
Astra SPX Temporary Revision 8	June 14, 2007	Gulfstream Astra SPX Airplane Flight Manual.
Astra Temporary Revision 15	June 14, 2007	Gulfstream Astra Airplane Flight Manual.
Gulfstream 100 Temporary Revision 1	June 14, 2007	Gulfstream 100 Airplane Flight Manual.

Issued in Renton, Washington, on June 6, 2008.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–14469 Filed 7–7–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28255; Directorate Identifier 2007–NM–023–AD; Amendment 39–15589; AD 2008–13–26]

RIN 2120–AA64

Airworthiness Directives; Lockheed Model 1329 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Lockheed Model 1329 series airplanes. This AD requires determining the part number on the steering cylinder assembly for the nose landing gear (NLG), determining the total flight cycles accumulated on the NLG steering cylinder assembly, repetitively replacing the assembly, inspecting for missing tow turning limit markings, and performing corrective actions if necessary. This AD results from reports of numerous failures of the NLG steering cylinder. We are issuing this AD to prevent the loss of hydraulic pressure and steering control.

DATES: This AD is effective August 12, 2008.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of August 12, 2008.

ADDRESSES: For service information identified in this AD, contact Lockheed Martin Aeronautics Company, 86 South Cobb Drive, Marietta, Georgia 30063.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Hector Hernandez, Aerospace Engineer, Systems and Equipment Branch, ACE–119A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone (770) 703–6069; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to certain Lockheed Model 1329 series

airplanes. That NPRM was published in the **Federal Register** on May 24, 2007 (72 FR 29088). That NPRM proposed to require determining the part number on the steering cylinder assembly for the nose landing gear (NLG), determining the total flight cycles accumulated on the NLG steering cylinder assembly, repetitively replacing the assembly, inspecting for missing tow turning limit markings, and performing corrective actions if necessary.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received.

Request To Withdraw NPRM: Inadequate To Correct Unsafe Condition

Faith Landmark Ministries requests that we withdraw the NPRM because it does not address the real problem with the NLG steering cylinder: Possible fatigue cracking due to machining errors during manufacture.

We disagree. Based on information from Lockheed Martin, due to lack of access to this area there is no reliable inspection that can be performed in the thread relief area where the failures are occurring. The only way to do the inspection is to disassemble the actuator steering cylinder—which would destroy the cylinder. Originally the NLG steering cylinder was a life-limited part, but unknown to Lockheed Martin the life limit was removed from the Lockheed JetStar/Handbook of Operating and Maintenance Instructions (HOMI). We have determined that it is necessary to issue the final rule to re-establish a relevant life limit and to address the identified unsafe condition.

Request To Remove Certain Cylinder Part Numbers as Affected

Faith Landmark Ministries and Carl A. Smith request that we revise the NPRM to remove P/N JL1955–7 steering cylinder as an affected part, because there is no record of a JL1955–7 steering cylinder failure due to stress corrosion cracking.

We disagree. We received reports of several more service failures of P/N JL1955–7 steering cylinders as a result of fatigue cracking in the thread relief area. Although no signs of corrosion were found in these particular failures, access to this area is difficult, and a reliable inspection cannot be performed in the thread relief area where the failures are occurring. Further, disassembling the actuator steering cylinder would destroy the cylinder. Crack growth cannot be shown and inspection intervals cannot be developed because the initial detectable crack length is longer than the critical crack length. As a result, we find it necessary to impose a fatigue-based life limit on the actuator steering cylinder. We have not changed the final rule regarding this issue.

Suggestion of Possible Batch Problem

Mr. Smith and Faith Landmark Ministries suggest the possibility of a batch problem with the P/N JL1955–7 steering cylinder. Faith Landmark Ministries states that four cylinders failed within two years on Lockheed Martin airplanes that had very close serial numbers (S/N 5211, 5213, 5215, and 5218) and another cylinder failed on an airplane having S/N 5210. Mr. Smith also notes that the airplanes on which the parts experienced fatigue failures are bunched together (S/Ns 5210, 5213, 5215, and 5218).

The commenters made no specific request. We have reviewed the data and have found no evidence of any batch problem with the steering cylinders having P/N JL1955–7. We have not changed the final rule regarding this issue.

Request To Withdraw NPRM: Documentation Errors

Faith Landmark Ministries requests that we withdraw the NPRM because of major errors in the supportive documentation and data supplied by Lockheed Martin.

We disagree. The identified unsafe condition is a serious safety issue that must be corrected. Lockheed Service Bulletins 329–300, Revision C, and 329II–32–8, Revision B, both dated September 5, 2006, were cited as the appropriate sources of service information for the NPRM's proposed requirements. The actions specified in these service bulletins adequately address the identified unsafe condition; however, these service bulletins did contain discrepancies, which Lockheed Martin has corrected in Lockheed Service Bulletin 329–300, Revision D, and 329II–32–8, Revision C, both dated October 4, 2007. Relevant changes to the service bulletins are outlined below. We have determined that it is necessary to issue this final rule in order to address the identified unsafe condition. We have revised paragraph (f) of this final rule to require the revised service bulletins, and provided credit for accomplishment of the earlier revisions.

Requests To Address Service Bulletin Discrepancies

Faith Landmark Ministries requests correction of certain discrepancies, as outlined below, in the service information cited in the NPRM. Lockheed Martin also stated that several operators have indicated a need for additional instructions on rebuilding the NLG steering cylinder assembly.

Since we issued the NPRM, Lockheed issued Lockheed Service Bulletin 329–300, Revision D, and 329II–32–8, Revision C, both dated October 4, 2007. These revisions address many of the problems noted by the commenters, but do not add work beyond the actions specified in the previous revision levels. The service bulletins also extend the life limits for certain NLG steering cylinder assemblies (as set forth in the Life Limits table below).

REVISED JETSTAR NLG STEERING CYLINDER ASSEMBLY LIFE LIMITS

Component	Part No.	Life limit (in flight cycles)
7049–T73 die forging	JL1955–5	2,175
7050–T7451 plate	JL1955–9	1,113
4340 steel bar	JL1955–801	3,211

We have revised paragraph (f) of this AD to require the revised service bulletins and added new paragraph (j) of this AD to provide credit for work already done in accordance with the previous revisions.

Paragraph 2.B.(1) of the service bulletins indicates disassembling, cleaning, and inspecting the NLG steering actuator assembly per ''HOMI 32.4.4.1'' (of the Lockheed JetStar/Handbook of Operating and Maintenance Instructions), but the correct reference is ''HOMI Figure 32–26A.'' Faith Landmark Ministries states that for nose steering system rigging instructions, paragraph 2.B.(5) of the service bulletins refers to ''HOMI Figure

32–22,'' but the correct reference is ''HOMI Figure 32–25'' and that paragraph 2.B.(4) should refer to ''HOMI Figure 32–26A.'' The service bulletins have been revised to correct these discrepancies. Although the revised service bulletins do not specify the HOMI, they incorporate the necessary figure and instructions.

Paragraph 2.B.(2) of the service bulletins specifies to identify the replacement NLG steering cylinder assembly with a serial number in the location and method specified by engineering drawing JL–1955, Revision AE or later. Faith Landmark Ministries states that one or more JetStar operators will probably use the same serial number so that, after repair, overhaul, or replacement, multiple units could have the same identifier. Further, the commenter states that the NLG steering cylinders are not serialized, so they cannot be traced. The commenter notes that many operators, trying to comply with an earlier version of the service bulletin, installed exchanged overhauled units, which are not serialized. As a result, the cylinders are mixed within the fleet, and it is possible that some of the mis-machined cylinders are still in service.

We agree that the identification of the NLG steering cylinder assembly must be clear. The revised service bulletins specify completing the identification plate to indicate compliance with the service bulletin, and to indicate new P/N JL1501–7 or JL1501–9 for the NLG steering actuator assembly. It is our understanding that the JL1955–13 cylinder assembly (which uses the JL1955–15 cylinder) will have a serial number consisting of a vendor cage code and sequential numerical lot number beginning at –001. For example, the serial number should be 8 characters XXXXX001, where XXXXX is the vendor cage code unique to the manufacturer (vendor) and –001 identifies the lot number. The proposed serial number will tie the cylinder assembly to a specific manufacturer and lot number for traceability. As we discussed previously, we have revised this final rule to refer to the revised service bulletins.

Requests for Revised Engineering Drawing

Mr. Smith and Faith Landmark Ministries refer to two reports by the National Transportation Safety Board (NTSB): (1) The report associated with the NPRM (regarding a 1998 incident involving a Lockheed Model 1329 airplane on which the nose landing gear wheel locked sideways on landing and caused the airplane to run off the runway) and (2) NTSB Materials Laboratory Factual Report 99–107, dated April 13, 1999. The commenters note that the Lockheed engineering drawing for the cylinder does not clearly define the machining details of this region of the cylinder, but shows a large radius without dimensions. The commenters suggest that this indicates a design problem that needs to be corrected. The commenters state that the fatigue origins were all located in a very straight circular path in the tread relief area around the inner surface of the cylinder.

We infer that the commenters are requesting that we wait to issue the final rule until a revised drawing is available. We agree that the NTSB reports could indicate a design problem. Lockheed Martin examined engineering drawing JL–1955, Revision AD, dated March 10, 1978, and determined that view A on sheet 1 did not contain sufficient clarity to consistently produce the cylinder in a condition that Lockheed Martin had intended. Lockheed Martin examined the engineering drawing and found that the radius was defined but needed clarification. Lockheed Martin has prepared an engineering order against drawing JL–1955 and determined that sufficient detail now exists to consistently produce the cylinder with the intended thread relief groove. However, the revised service bulletins removed any reference to drawing JL–1955, Revision AD or AE. We have not changed the final rule regarding this issue.

Request To Clarify Criteria for Maintenance Personnel

Faith Landmark Ministries asserts that reassembling the NLG steering cylinder should be done by qualified shop persons or overhaul specialists at an appropriately rated repair station.

We infer that the commenter is requesting that we revise the NPRM to clarify the qualifications of personnel allowed to reassemble the NLG steering cylinder. As long as the actions are to be accomplished by persons prescribed in section 43.3 (''Persons authorized to perform maintenance, preventive maintenance, rebuilding, and alterations.'') of the Federal Aviation Regulations (14 CFR 43.3), the persons authorized to perform the work required in an AD are not prescribed by the AD. We have not changed the final rule regarding this issue.

Request To Remove Spares Prohibition

Faith Landmark Ministries states that Lockheed Martin issued a JetStar Assessment, dated June 8, 2007, which reviews the history of the P/N JL1955–7 cylinder failures due to fatigue at the thread relief. This is the current configuration of most JetStars. The commenter is aware of six P/N JL1955–7 cylinders that were built as spares. The commenter states that there is no need to remove all the existing P/N JL1955–7 NLG cylinders from service. Lockheed Martin has developed a way to examine these cylinders; Lockheed Martin inspected the six cylinders that were in stock.

We disagree with the commenter's assertion that Lockheed Martin has developed an adequate inspection for the P/N JL1955–7 NLG cylinders that would detect critical cracking. The JetStar assessment by Lockheed Martin addresses the service history of the failed cylinder along with material changes made on P/N JL1955–7, and explores the possibility of nondestructive inspections. Lockheed Martin concluded that combined ultrasonic and eddy current inspections would probably be ineffective. Lockheed Martin also considered a fluorescent penetrant inspection, provided a time interval could be calculated for continued safe flight and the cylinder could be disassembled for inspection.

Based on information provided to the FAA, no available nondestructive inspection would detect a critical crack in the thread relief area where the failures are occurring because access to this area is unavailable. As stated previously, the only way to inspect the area is to disassemble the steering cylinder—which would destroy the cylinder. However, according to the provisions of paragraph (l) of the final rule, we may approve requests for alternative method of compliances (AMOCs) if the request includes data that prove that the AMOC would provide an acceptable level of safety. We have not changed the final rule regarding this issue.

Request for Information on Addressing Unsafe Condition

Faith Landmark Ministries questions why Lockheed Martin did not take any action by way of an AD or similar to ensure that all the P/N JL1955–7 cylinders in the fleet were inspected for problems as soon as Lockheed Martin noticed the grouping of aircraft serial numbers experiencing steering cylinder failures or immediately after the incident that occurred in Houston in 1998, and the subsequent NTSB report.

Only the FAA may initiate and issue ADs. Lockheed Martin did report the in-service failures to the FAA, and communicated with the NTSB as required. Data were gathered to enable a full assessment. The commenter made

no specific request to change the NPRM. No change to the final rule is necessary regarding this issue.

Request for Clarification of Unsafe Condition and Corrective Action

Faith Landmark Ministries further questions why, when Service Bulletins 329–300 and 329II–32–8 came out in 2000, they referred only to ''corrosion problems'' and included no requirement to inspect the steering cylinder for the mis-machined thread relief that caused the failure of the steering cylinder in the 1998 incident that resulted from the unsafe condition and prompted the AD.

The incident was investigated by the NTSB. Lockheed Martin was in contact with the NTSB and waiting for a final report and the actual part before they could properly make the assessment as shown in the service bulletins. The new revisions of the service bulletins issued in 2007 include an inspection of all threads for burrs or evidence of cross threading. The commenter made no specific request to change the NPRM. We have not changed the final rule regarding this issue.

Request To Revise Cost Estimate

Lockheed Martin states that the estimated cost for the part should be $14,876.57 per airplane, but the NPRM indicated no cost for parts.

We infer that the operator requests that we revise the cost estimate of the NPRM. We agree. The NPRM provided the estimated costs for the inspection only. This final rule includes the costs for the conditionally required cylinder replacement.

Request To Revise Description of Unsafe Condition

Lockheed Martin requests that we revise the Discussion section of the NPRM to add ''fatigue cracking in the thread relief'' as a possible cause of the NLG steering cylinder failures.

We agree with Lockheed Martin's rationale, but the Discussion section is not repeated in a final rule so we have not changed this final rule regarding this issue.

Request To Revise Lockheed Martin Address

Lockheed Martin requests that we revise the NPRM to update its address. We have changed the appropriate references in the final rule accordingly.

Request To Remove Life Limit

Lockheed Martin indicates it plans to revise Service Bulletins 329–300 and 329II–32–8 to remove the life limit on cylinder assembly P/N JL1955–9. Lockheed Martin believes that no P/N JL1955–9 cylinders have been built, as this material will not be the preferred material for replacement steering cylinders.

We disagree that the life limit on P/N JL1955–9 should be removed. We have received no evidence indicating that this part does not have corrosion or fatigue issues, in light of the incidents that have occurred. The revised service bulletins did not remove the life limit on any of the cylinder assemblies. No change to the final rule is necessary regarding this issue.

Request To Clarify Cost Estimate

Four Star Int'l, Inc., states that replacement cylinders should be made available to operators at no cost. The commenter reports that an NLG steering actuator failed apparently due to stress, with no corrosion observed. Because Lockheed Martin has since identified the source of the problem, and because this operator has already paid to replace the part once, the commenter contends that future parts costs should be Lockheed Martin's responsibility.

The operator made no specific request to change the NPRM. Operators are responsible for maintaining their airplanes to the type design. The FAA cannot direct payment for replacement parts by any party. Operators should discuss any issues regarding these costs with the airplane manufacturer. We have made no change to the final rule regarding this issue.

Additional Change to NPRM

Paragraph (g) of the NPRM specified to replace any cylinder assembly having P/N JL1955–1 or JL1955–3 with a new assembly, and paragraph (j) of the NPRM (paragraph (k) of this final rule) would have prohibited the installation of any cylinder assembly having P/N JL1955–1 or JL1955–3. (P/N JL1955–3 is a cylinder, rather than an assembly.) Since the P/N JL1955–1 cylinder assembly uses the P/N JL1955–3 cylinder, we have deleted the references to P/N JL1955–3 in the final rule.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We also determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

There are about 48 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspect for P/N	3	$80	$0	$240	34	$8,160.
Replace assembly	2	80	14,877	15,037, per replacement	Up to 34	Up to $511,258, per replacement.

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

This AD will not have federalism implications under Executive Order 13132. This AD will not have a

substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

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

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

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

You can find our regulatory evaluation and the estimated costs of compliance 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:

2008–13–26 Lockheed: Amendment 39–15589. Docket No. FAA–2007–28255; Directorate Identifier 2007–NM–023–AD.

Effective Date

(a) This airworthiness directive (AD) is effective August 12, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the following airplanes, certificated in any category.

(1) Lockheed Model 1329–23A, 1329–23D, and 1329–23E series airplanes; serial numbers 5001 through 5162 inclusive.

(2) Lockheed Model 1329–25 series airplanes, serial numbers 5201 through 5240 inclusive.

Unsafe Condition

(d) This AD results from reports of numerous failures of the nose landing gear (NLG) steering cylinder. We are issuing this AD to prevent the loss of hydraulic pressure and steering control.

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 Information

(f) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of the applicable service bulletin identified in Table 1 of this AD.

TABLE 1.—SERVICE BULLETINS

Lockheed Service Bulletin	Revision	Date	Affected airplanes
329–300	D	October 4, 2007	1329–23A, 1329–23D, 1329–23E.
329II–32–8	C	October 4, 2007	1329–25.

Inspection for Cylinder Assembly Part Number

(g) Within 30 days after the effective date of this AD, inspect to determine the part number (P/N) on the steering cylinder assembly for the nose landing gear (NLG). A review of airplane maintenance records is acceptable in lieu of this inspection if the part number can be conclusively determined from that review. Replace any cylinder assembly having P/N JL1955–1 with a new assembly before further flight in accordance with the applicable service bulletin.

Life Limits

(h) Within 30 days after the effective date of this AD: Review the airplane records to determine the total flight cycles accumulated on the NLG steering cylinder assembly, in accordance with the applicable service bulletin. Before any steering cylinder assembly component reaches its life limit, as specified in Table 1 of the Accomplishment Instructions of the applicable service bulletin, or within 30 days after the effective date of this AD, whichever occurs later: Replace the cylinder assembly with a new assembly in accordance with the applicable service bulletin. If the steering cylinder assembly's age cannot be positively determined from the records review, replace it within 30 days after the effective date of this AD, in accordance with the applicable service bulletin. Thereafter, replace the cylinder assembly at intervals not to exceed the life limits as specified in the applicable service bulletin.

Inspection for Tow Turning Limit Markings

(i) Within 30 days after the effective date of this AD: Perform a general visual inspection above the NLG doors to detect missing tow turning limit markings, in accordance with the applicable service bulletin. If any markings are absent, restore/apply markings before further flight in accordance with the applicable service bulletin.

Note 1: 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.''

Credit for Actions Done per Previous Version of Service Bulletins

(j) Accomplishment of the actions specified in Lockheed Service Bulletin 329–300, Revision C, dated September 5, 2006, or 329II–32–8, Revision B, dated September 5, 2006, as applicable, before the effective date of this AD, is acceptable for compliance with the corresponding requirements of this AD.

Parts Installation

(k) As of the effective date of this AD, do not install on any airplane a NLG steering cylinder assembly that has P/N JL1955–1.

Alternative Methods of Compliance (AMOCs)

(l)(1) The Manager, Atlanta Aircraft Certification Office (ACO), FAA, ATTN: Hector Hernandez, Aerospace Engineer, Systems and Equipment Branch, ACE–119A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone (770) 703–6069; fax (770) 703–6097; has the authority to approve AMOCs for this AD, if requested using 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.

Material Incorporated by Reference

(m) You must use Lockheed Service Bulletin 329–300, Revision D, dated October 4, 2007; or Lockheed Service Bulletin 329II–32–8, Revision C, dated October 4, 2007; as applicable, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of

this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Lockheed Martin Aeronautics Company, 86 South Cobb Drive, Marietta, Georgia 30063.

(3) You may review copies of the service information incorporated by reference at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on June 13, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–14470 Filed 7–7–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–0184; Directorate Identifier 2007–NM–140–AD; Amendment 39–15575; AD 2008–13–12]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, –200C, –300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. This AD requires various repetitive inspections for cracking of the upper frame to side frame splice of the fuselage, and other specified and corrective actions if necessary. This AD also provides for an optional preventive modification, which terminates the repetitive inspections. This AD results from a report that the upper frame of the fuselage was severed between stringers S–13L and S–14L at station 747, and the adjacent frame at station 767 had a 1.3-inch-long crack at the same stringer location. We are issuing this AD to detect and correct fatigue cracking of the upper frame to side frame splice of the fuselage, which could result in reduced structural integrity of the frame and adjacent lap joint. This reduced structural integrity can increase loading in the fuselage skin, which will accelerate skin crack growth and result in decompression of the airplane.

DATES: This AD is effective August 12, 2008.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of August 12, 2008.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Wayne Lockett, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6447; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to certain Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. That NPRM was published in the **Federal Register** on November 13, 2007 (72 FR 63831). That NPRM proposed to require various repetitive inspections for cracking of the upper frame to side frame splice of the fuselage, and other specified and corrective actions if necessary. That NPRM also provides for an optional preventive modification, which would terminate the repetitive inspections.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received.

Requests To Clarify Certain Paragraphs

Boeing, Southwest Airlines (SWA), United Airlines (UA), and the Air Transport Association (ATA) on behalf of its member UA, ask that certain language in certain paragraphs of the NPRM be clarified, as follows:

Boeing states that the intent of paragraph (h) of the NPRM is unclear, and the conditional statement could be misinterpreted. Boeing notes that the statement ''the structure that has been damaged is not covered in the structural repair manual'' (SRM) will likely be interpreted differently by each airline. Boeing adds that this frame area is relatively complex with a frame splice, stringer clips, and, in some cases, a shear tie in the area of the repair. Boeing states that only specific SRM repairs can be used to fix the frame in this complex area; for that reason, the referenced service bulletin specifically lists the SRM sections that can be used, and recommends contacting Boeing if the existing repairs are not per these sections. Boeing notes that there are other frames and general formed section repairs in the SRM that operators could have used that may or may not work for this area; for those cases or others that may not have been repaired in accordance with the SRM, Boeing would like to evaluate them for structural adequacy. Boeing believes the intent of paragraph (h) is to cover this situation, except to refer to paragraph (j) of the NPRM instead of contacting Boeing. Boeing recommends that paragraph (h) be rewritten as follows: ''If during the accomplishment of the corrective actions required by paragraph (f) of this AD, for airplanes for which a repair has previously been accomplished, if the repair is not per the 737–400 SRM 53–00–07, Figure 201, Repair 1, or 737–500 SRM 53–00–07, Figure 201, Repair 1, or 737–300 SRM 53–00–07, Figure 201, Repair 1, or 737–100/200 SRM 53–10–4, Figure 1, as applicable, before further flight, repair in accordance with the procedures specified in paragraph (j) of this AD.''

ATA states that UA indicates that the term ''structural repair manual,'' as specified in paragraph (h) of the NPRM, should be replaced with ''Service Bulletin 737–53A1261 Part III.''

We agree that paragraph (h) of this AD should be clarified; there are many repairs for this structure specified in the SRM that could be installed which may not adequately address the unsafe condition. Therefore, we have changed paragraph (h) for clarification, as follows: ''For airplanes on which a repair has been previously accomplished: If, during accomplishment of the corrective actions required by paragraph (f) of this AD, it is found that the repair was not done per the Boeing 737–100/200 SRM 53–10–4, Figure 1, or the Boeing 737–300/400/500 SRM 53–00–07, Figure

201, Repair 1, as applicable; before further flight, repair in accordance with the procedures specified in paragraph (k) of this AD.''

SWA requests clarification of paragraphs (h) and (i) of the NPRM. SWA states that if an SRM repair is considered a repair option to inspection findings per Boeing Alert Service Bulletin 737–53A1261, dated January 19, 2006, as indicated in paragraph (h) of the NPRM, then paragraph (i) of the NPRM should specify that SRM repairs would be an alternative method of compliance (AMOC) and terminating action to the inspections specified in that service bulletin.

We do not agree that paragraph (i) of the NPRM should be changed to specify that SRM repairs are an AMOC and terminating action to the inspections specified in the service bulletin. The SRM is referenced in the service bulletin as an acceptable method for accomplishing certain repairs; therefore, it is not necessary to identify the SRM in paragraph (i) because the service bulletin (which includes the SRM contents) is already identified in that paragraph. We have made no change to the AD in this regard.

Boeing asks that we clarify paragraph (i)(1) of the NPRM to include a reference to Appendices A through X to the service bulletin citation, for not only the repair, but also the preventive modification. Boeing recommends that paragraph (i)(1) be rewritten as follows: ''Accomplishment of the repair specified in Part 3, or the preventive modification specified in Part 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1261, including Appendices A through X inclusive, dated January 19, 2006.'' Boeing adds that paragraph (i)(1) as currently written does not associate the appendices to the preventive modification. Appendices A through V of the service bulletin are directly applicable to the preventive modification.

We agree that paragraph (i)(1) of the NPRM (paragraph (j)(1) of this AD) should be clarified to add a reference to Appendices A through X to the service bulletin citation. This change links the appendices to the preventive modification, as well as the repair. We have changed paragraph (j)(1) accordingly.

UA asks that we clarify paragraph (i)(3) of the NPRM. UA notes that previously installed SRM repairs do not terminate re-inspections; although paragraph (i)(3) may lead an operator to think a previously installed SRM repair does terminate those inspections, as they are approved by the Manager, Seattle Aircraft Certification Office.

We understand UA's comment. As we explained previously, for clarification we have added a new paragraph (i) to this AD to define the action for airplanes on which a repair has been previously accomplished. Paragraph (j) of this AD, if accomplished, terminates the repetitive inspections required by paragraph (f) of this AD for the repaired or modified frames only. We have made no change to the AD in this regard.

Request To Clarify Certain Sections of the Preamble of the NPRM

Boeing requests that certain sections in the preamble of the NPRM be clarified for the following reasons:

1. Boeing states that the first paragraph of the Discussion section incorrectly references a Model 737–300 airplane, but the airplane found cracked was a Model 737–200 airplane.

2. Boeing notes that the last sentence specified in the Other Related Service Information section specifies that the inspections are ''recommended.'' Boeing states that the inspections are ''required,'' and suggests incorporating this change to the language.

We acknowledge the commenter's concern. However, the procedures specified in the service information are not regulatory; the procedures specified in service information can only be required by issuing an AD. We agree that the model referenced in the Discussion section was incorrect; however, the identified sections of the NPRM do not reappear in the final rule. Therefore, we find that no change to the AD is necessary in this regard.

Requests To Extend Compliance Times

SWA, KLM Royal Dutch Airlines (KLM), and UA ask that we extend the compliance times for the inspections as follows:

SWA asks that we consider a different compliance time for airplanes that have accomplished Boeing Service Bulletin 737–53A1177, since the likelihood of multi-element damage does not exist for airplanes on which that service bulletin has been accomplished at stringer 14 left or right. SWA recommends aligning the initial grace period and repeat intervals at the same frequency as defined in Boeing Service Bulletin 737–53–1216, section 1.E.; i.e., 9,000 flight cycles after issuance of the AD, and repeating the inspections thereafter every 9,000 flight cycles. SWA adds that this will align the interior access and inspection requirements with the frame inspection requirements in both service bulletins. SWA notes that the 9,000-flight-cycle interval would also allow each airplane to reach a heavy maintenance opportunity for the airplane to be in an appropriate setting for accomplishing the required inspections and repairs if required. SWA adds that it had several crack findings on airplanes with over 50,000 flight cycles, and therefore it cannot consider the Boeing findings an anomaly.

KLM states that it submitted a service request to Boeing asking them to consider a compliance time for Boeing Alert Service Bulletin 737–53A1261, which is equal to the compliance time given in AD 2006–26–09, amendment 39–14867 (72 FR 252, January 4, 2007), and Boeing Special Attention Service Bulletin 737–53–1216, Revision 1, dated June 8, 2006. KLM states that both inspections can then be done simultaneously during a C-check, without additional work. KLM adds that Boeing replied to the service request in October 2006 stating that no change in compliance time was anticipated. KLM notes that the impact of the inspection/preventive modification required by AD 2006–26–09 is similar to the inspection/preventive modification in the NPRM.

ATA on behalf of its member UA asks that we consider extending the repetitive inspection interval from 6,000 to 9,000 flight cycles in order to allow airplanes to reach a heavy maintenance opportunity. To date, UA states, it has inspected 960 frames per Boeing Alert Service Bulletin 737–53A1261 with no crack findings; the airplanes inspected ranged from 28,500 to 35,500 total flight cycles. UA suggests that the findings on the airplanes cited in the NPRM might be an anomaly rather than a trend if other industry findings are similar to UA's.

We do not agree to extend the compliance times. Although we recognize the convenience to the operator if the compliance time is aligned with its maintenance inspections, fatigue cracking of the upper frame to side frame splice of the fuselage is a significant safety issue, and we have determined that the proposed compliance times are warranted based on the effectiveness of the inspection procedure and the rate of crack growth. In developing appropriate compliance times for this AD, we considered those safety issues as well as the recommendations of the manufacturer, the availability of necessary repair parts, and the practical aspect of accomplishing the required inspections within an interval of time that corresponds to the normal maintenance schedules of most affected operators. We have made no change to the AD in this regard.

Request for Clarification of Compliance Time

KLM states that it assumes the new start date of the inspections will be the issue date of the AD, instead of the service bulletin issue date.

From this statement we infer that KLM is requesting that we clarify the compliance time specified in paragraph (f) of the NPRM. We agree that clarification is necessary. We have added a new paragraph (g) to the AD to clarify the compliance time. We have re-identified subsequent paragraphs accordingly.

Request To Change Cost Estimate

SWA states that the costs of compliance identified in the NPRM are underestimated. SWA states that the inspection, repair of crack findings, and terminating action on uncracked frames is close to 1,200 labor hours at an average labor rate of $80 per work hour. The cost per airplane is closer to $96,000 than $3,040. This estimate does not include access to the interior of the airplanes, as the airplanes were in a heavy maintenance environment.

We infer that the commenter is asking that we revise the cost estimate provided in the NPRM. We do not agree. The cost information provided in AD actions describes only the direct costs of the specific requirements. Based on the best data available, the manufacturer provided the number of work hours to do the required actions for this AD. We recognize that, in doing the actions required by an AD, operators might incur incidental costs, in addition to the direct costs. The cost analysis in AD rulemaking actions, however, typically does not include incidental costs such as the time required to gain access and close up, time necessary for planning, or time necessitated by other administrative actions. Those incidental costs, which might vary significantly among operators, are almost impossible to calculate. We have made no change to the AD in this regard.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We also determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

There are about 1,509 airplanes of the affected design in the worldwide fleet. This AD affects about 524 airplanes of U.S. registry. The inspections take between 18 and 38 work hours per airplane, depending on airplane configuration, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the inspections required by this AD for U.S. operators is between $754,560 and $1,592,960, or $1,440 and $3,040 per airplane, per inspection cycle.

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

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

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

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

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

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

You can find our regulatory evaluation and the estimated costs of compliance 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:

2008–13–12 Boeing: Amendment 39–15575. Docket No. FAA–2007–0184; Directorate Identifier 2007–NM–140–AD.

Effective Date

(a) This airworthiness directive (AD) is effective August 12, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin 737–53A1261, dated January 19, 2006.

Unsafe Condition

(d) This AD results from a report that the upper frame of the fuselage was severed between stringers S–13L and S–14L at station 747, and the adjacent frame at station 767 had a 1.3-inch-long crack at the same stringer location. We are issuing this AD to detect and correct fatigue cracking of the upper frame to side frame splice of the fuselage, which could result in reduced structural integrity of the frame and adjacent lap joint. This reduced structural integrity can increase loading in the fuselage skin, which will accelerate skin crack growth and result in decompression 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.

Repetitive Inspections/Corrective Actions

(f) At the applicable compliance time listed in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1261, including Appendices A through X inclusive, dated January 19, 2006; except as provided by paragraph (g) of this AD: Do the applicable inspections for cracking of the upper frame to side frame splice of the fuselage by doing all of the actions, as specified in the Accomplishment Instructions of the service bulletin; except as provided by paragraphs (h) and (i) of this AD. Do all applicable specified and corrective actions before further flight in accordance with the service bulletin. Repeat the applicable inspections thereafter at intervals not to exceed 6,000 flight cycles until the terminating action in paragraph (j) of this AD has been accomplished.

(g) Where Boeing Alert Service Bulletin 737–53A1261, including Appendices A

through X inclusive, dated January 19, 2006, specifies a compliance time relative to the date on the service bulletin, this AD requires compliance within the specified compliance time after the effective date of this AD.

(h) If any crack is found during any inspection required by this AD, and Boeing Alert Service Bulletin 737–53A1261, including Appendices A through X inclusive, dated January 19, 2006, specifies to contact Boeing for appropriate action: Before further flight, repair the crack in accordance with the procedures specified in paragraph (k) of this AD.

(i) For airplanes on which a repair has been previously accomplished: If, during accomplishment of the corrective actions required by paragraph (f) of this AD, it is found that the repair was not done per the Boeing 737–100/200 Structural Repair Manual (SRM) 53–10–4, Figure 1, or the Boeing 737–300/400/500 SRM 53–00–07, Figure 201, Repair 1, as applicable; before further flight, repair in accordance with the procedures specified in paragraph (k) of this AD.

Optional Terminating Action

(j) Accomplishing the actions specified in paragraph (j)(1), (j)(2), or (j)(3) of this AD, as applicable, terminates the repetitive inspections required by paragraph (f) of this AD for the repaired or modified frames only.

(1) Accomplishment of the repair specified in Part 3, or the preventive modification specified in Part 4, of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1261, including Appendices A through X inclusive, dated January 19, 2006.

(2) Accomplishment of the repair or the preventive modification specified in Boeing Message M–7200–02–01294, dated August 20, 2002.

Alternative Methods of Compliance (AMOCs)

(k)(1) The Manager, Seattle ACO, 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.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

Material Incorporated by Reference

(l) You must use Boeing Alert Service Bulletin 737–53A1261, dated January 19, 2006, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

(3) You may review copies of the service information incorporated by reference at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on June 12, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–14471 Filed 7–7–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 745 and 774

[Docket No. 080528717–8722–01]

RIN 0694–AE36

Implementation of the Understandings Reached at the April 2008 Australia Group (AG) Plenary Meeting; Additions to the List of States Parties to the Chemical Weapons Convention (CWC)

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security (BIS) is publishing this final rule to amend the Export Administration Regulations (EAR) to implement the understandings reached at the April 2008 plenary meeting of the Australia Group (AG). This final rule amends the EAR to reflect changes to the AG ''Control List of Biological Agents'' that the countries participating in the AG adopted at the plenary meeting. Specifically, this rule revises the Commerce Control List (CCL) entry that controls animal pathogens on the AG ''Control List of Biological Agents'' by revising the listing for avian influenza viruses to replace the description of highly pathogenic avian influenza (HPAI) with new HPAI language that is based on the definition currently used by the World Organization for Animal Health (OIE).

This rule also amends the provisions in the EAR that describe the advance notification and annual report requirements for exports of Chemical Weapons Convention (CWC) Schedule 1 chemicals and the End-Use Certificate requirement for certain exports of CWC Schedule 3 chemicals by updating the fax number and address for submitting these documents to BIS.

Finally, this rule amends the list of countries that currently are States Parties to the CWC by adding ''Congo (Republic of the)'' and ''Guinea-Bissau,''which recently became States Parties. As a result of this change, the CW (Chemical Weapons) license requirements and policies in the EAR that apply to these two countries now conform with those applicable to other CWC States Parties.

DATES: This rule is effective July 8, 2008. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis.

ADDRESSES: You may submit comments, identified by RIN 0694–AE36, by any of the following methods:

- *E-mail: publiccomments@bis.doc.gov.* Include ''RIN 0694–AE36'' in the subject line of the message.
- *Fax:* (202) 482–3355. Please alert the Regulatory Policy Division, by calling (202) 482–2440, if you are faxing comments.
- *Mail or Hand Delivery/Courier:* Willard Fisher, U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th Street & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230, ATTN: RIN 0694–AE36.

Send comments regarding this collection of information, including suggestions for reducing the burden, to David Rostker, Office of Management and Budget (OMB), by e-mail to *David_Rostker@omb.eop.gov*, or by fax to (202) 395–7285; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, 14th Street & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230. Comments on this collection of information should be submitted separately from comments on the final rule (i.e., RIN 0694–AE36)—all comments on the latter should be submitted by one of the three methods outlined above.

FOR FURTHER INFORMATION CONTACT: Elizabeth Scott, Director, Chemical and Biological Controls Division, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security, Telephone: (202) 482–3343.

SUPPLEMENTARY INFORMATION:

Background

The Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) to implement the understandings reached at the annual plenary meeting of the Australia Group (AG) that was held in Paris on April 14–18, 2008. The Australia Group is a multilateral forum, consisting of 40 participating countries, that maintains export controls on a list of chemicals, biological agents, and related equipment and technology that could be used in a chemical or biological weapons program. The AG periodically reviews items on its control list to enhance the effectiveness of participating governments' national controls and to achieve greater harmonization among these controls.

The understandings reached at the April 2008 annual plenary meeting included a decision to update the AG ''Control List of Biological Agents'' by revising the listing for avian influenza viruses to replace the description of highly pathogenic avian influenza (HPAI), which was based on a European Community (EC) directive (Directive 92/40/EC) that was repealed, effective July 1, 2007. This decision allows AG participating countries to adopt HPAI language that is based on the definition currently used by the World Organization for Animal Health (OIE). The latter is the standard definition used by international reference laboratories for the identification and characterization of HPAI. The OIE criteria for classifying an avian influenza (AI) virus as a highly pathogenic avian influenza (HPAI) virus are described in the ''Manual of Diagnostic Tests and Vaccines for Terrestrial Animals'' (5th edition, 2004; *see* Chapter 2.7.12: Avian Influenza; last modified May 2005).

This final rule amends the EAR to implement the AG decision concerning the characterization of HPAI viruses by revising the listing for avian influenza viruses in Export Control Classification Number (ECCN) 1C352.a.2 on the Commerce Control List (CCL) (Supplement No. 1 to part 774 of the EAR) to conform with the OIE definition of HPAI. As a result of the changes made by this rule, an avian influenza (AI) virus will be considered to be highly pathogenic if the virus: (1) Has an intravenous pathogenicity index (IVPI) in 6-week-old chickens greater than 1.2; or (2) causes at least 75 percent mortality in 4- to 8-week-old chickens infected intravenously.

In addition, this rule adds a new Note to ECCN 1C352.a.2 that identifies certain AI viruses of the H5 or H7 subtype that are controlled under this ECCN even though they do not possess either of the two HPAI characteristics described above. This new Note requires that AI viruses of the H5 or H7 subtype that do not have either of these characteristics be sequenced to determine whether multiple basic amino acids are present at the cleavage site of the haemagglutinin molecule (HA0). If the test indicates that the amino acid motif is similar to that observed for other HPAI isolates, then the isolate being tested should be considered as HPAI and the virus is controlled under ECCN 1C352.a.2.

This rule also amends Section 745.1(a)(2) and (b)(3) of the EAR, which describe the advance notification and annual report requirements that apply to exports of Chemical Weapons Convention (CWC) Schedule 1 chemicals, by updating the fax number and address for submitting these documents to BIS. In addition, this rule amends Section 745.2(a)(2) of the EAR, which describes the End-Use Certificate requirement that applies to certain exports of CWC Schedule 3 chemicals (i.e., exports to States not Party to the CWC), by updating the fax number and address for submitting this document to BIS.

Finally, this rule amends Supplement No. 2 to Part 745 of the EAR (titled ''States Parties to the Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and on Their Destruction'') by adding ''Congo (Republic of the)'' and ''Guinea-Bissau,'' which became States Parties to the CWC on January 3, 2008, and June 19, 2008, respectively. As a result of this change, the CW (Chemical Weapons) license requirements and policies that apply to these two countries now conform with those applicable to other CWC States Parties, as described in Section 742.18 of the EAR.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as extended by the Notice of August 15, 2007, 72 FR 46137 (August 16, 2007), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act.

Saving Clause

Shipments of items removed from eligibility for export or reexport under a license exception or without a license (i.e., under the designator ''NLR'') as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting carrier, or en route aboard a carrier to a port of export, on August 7, 2008, pursuant to actual orders for export or reexport to a foreign destination, may proceed to that destination under the previously applicable license exception or without a license (NLR) so long as they are exported or reexported before August 22, 2008. Any such items not actually exported or reexported before midnight, on August 22, 2008, require a license in accordance with this regulation.

''Deemed'' exports of ''technology'' and ''source code'' removed from eligibility for export under a license exception or without a license (under the designator ''NLR'') as a result of this regulatory action may continue to be made under the previously available license exception or without a license (NLR) before August 22, 2008. Beginning at midnight on August 22, 2008, such ''technology'' and ''source code'' may no longer be released, without a license, to a foreign national subject to the ''deemed'' export controls in the EAR when a license would be required to the home country of the foreign national in accordance with this regulation.

Rulemaking Requirements

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

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule contains a collection of information subject to the requirements of the PRA. This collection has been approved by OMB under Control Number 0694–0088 (Multi-Purpose Application), which carries a burden hour estimate of 58 minutes to prepare and submit form BIS–748. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to David Rostker, Office of Management and Budget (OMB), and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, as indicated in the ''**ADDRESSES**'' section of this rule.

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

4. The provisions of the Administrative Procedure Act (5 U.S.C.

553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date are inapplicable for those changes to Export Control Classification Number (ECCN) 1C352.a.2 on the Commerce Control List (Supplement No. 1 to part 774) and to Supplement No. 2 to part 745, because those revisions involve a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). The provisions of the Administrative Procedure Act requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date are inapplicable for those changes to sections 745.1(a)(2) and (b)(3) and 745.2(a)(2), because those revisions relate to rules of agency organization, procedure, or practice. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. 553 or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) are not applicable.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis.

List of Subjects

15 CFR Part 745

Administrative practice and procedure, Chemicals, Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Part 774

Exports, Foreign trade, Reporting and recordkeeping requirements.

■ Accordingly, parts 745 and 774 of the Export Administration Regulations (15 CFR Parts 730–774) are amended as follows:

PART 745—[AMENDED]

■ 1. The authority citation for 15 CFR part 745 continues to read as follows:

Authority: 50 U.S.C. 1701 *et seq.*; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; Notice of November 8, 2007, 72 FR 63963 (November 13, 2007).

■ 2. Section 745.1 is amended by revising paragraphs (a)(2) and (b)(3) to read as follows:

§ 745.1 Advance notification and annual report of all exports of Schedule 1 chemicals to other States Parties.

* * * * *

(a) * * *

(2) Send the notification either by fax to (202) 482–1731 or by mail or courier delivery to the following address: Information Technology Team, Treaty Compliance Division, Bureau of Industry and Security, U.S. Department of Commerce, Room 4515, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230. Attn: ''Advance Notification of Schedule 1 Chemical Export''.

* * * * *

(b) * * *

(3) Send the report either by fax to (202) 482–1731 or by mail or courier delivery to the following address: Information Technology Team, Treaty Compliance Division, Bureau of Industry and Security, U.S. Department of Commerce, Room 4515, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230. Attn: ''Annual Report of Schedule 1 Chemical Export''.

■ 3. Section 745.2(a)(2) is revised to read as follows:

§ 745.2 End-Use Certificate reporting requirements under the Chemical Weapons Convention.

* * * * *

(a) * * *

(2) Submit a copy of the End-Use Certificate, no later than 7 days after the date of export, either by fax to (202) 482–1731 or by mail or courier delivery to the following address: Information Technology Team, Treaty Compliance Division, Bureau of Industry and Security, U.S. Department of Commerce, Room 4515, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230. Attn: ''CWC End-Use Certificate Report''.

* * * * *

Supplement No. 2 to Part 745—[Amended]

■ 4. Supplement No. 2 to Part 745 is amended:

■ a. By revising the undesignated center heading ''List of States Parties as of August 1, 2007'' to read ''List of States Parties as of July 1, 2008''; and

■ b. By adding, in alphabetical order, the countries ''Congo (Republic of the)'' and ''Guinea-Bissau''.

PART 774—[AMENDED]

■ 5. The authority citation for 15 CFR part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*, 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 15, 2007, 72 FR 46137 (August 16, 2007).

Supplement No. 1 to Part 774—[Amended]

■ 6. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 1—Materials, Chemicals, ''Microorganisms'' & ''Toxins,'' ECCN 1C352 is amended by revising paragraph (a)(2) under *''Items''* in the List of Items Controlled to read as follows:

1C352 Animal pathogens, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Unit: * * *

Related Controls: * * *

Related Definitions: * * *

Items:

a. * * *

a.2. Avian influenza (AI) viruses identified as having high pathogenicity (HP), as follows:

a.2.a. AI viruses that have an intravenous pathogenicity index (IVPI) in 6-week-old chickens greater than 1.2; or

a.2.b. AI viruses that cause at least 75% mortality in 4- to 8-week-old chickens infected intravenously.

Note: Avian influenza (AI) viruses of the H5 or H7 subtype that do not have either of the characteristics described in 1C352.a.2 (specifically, 1C352.a.2.a or a.2.b) should be sequenced to determine whether multiple basic amino acids are present at the cleavage site of the haemagglutinin molecule (HA0). If the amino acid motif is similar to that observed for other HPAI isolates, then the isolate being tested should be considered as HPAI and the virus is controlled under 1C352.a.2.

* * * * *

Dated: July 1, 2008.

Eileen M. Albanese,

Acting Assistant Secretary for Export Administration.

[FR Doc. E8–15386 Filed 7–7–08; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9411]

RIN 1545–BE78

Elections Regarding Start-up Expenditures, Corporation Organizational Expenditures, and Partnership Organizational Expenses

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations relating to elections to deduct start-up expenditures under section 195 of the Internal Revenue Code (Code), organizational expenditures of corporations under section 248, and organizational expenses of partnerships under section 709. The American Jobs Creation Act of 2004 amended these three sections of the Code to provide similar rules for deducting these types of expenses that are paid or incurred after October 22, 2004. The regulations affect taxpayers that pay or incur these expenses and provide guidance on how to elect to deduct the expenses in accordance with the new rules. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective on July 8, 2008.

Applicability Dates: For dates of applicability, see §§ 1.195–1T(d), 1.248–1T(f), and 1.709–1T(b)(5).

FOR FURTHER INFORMATION CONTACT: Grace Matuszeski, (202) 622–7900 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document amends the Income Tax Regulations (26 CFR part 1) under sections 195, 248, and 709 of the Code to reflect amendments made by section 902 of the American Jobs Creation Act of 2004 (Pub. L. 108–357, 118 Stat. 1418) (the Act). The amendments made by section 902 of the Act are effective for amounts paid or incurred after October 22, 2004, the date of the enactment of the Act.

As amended by section 902(a) of the Act, section 195(b) allows an electing taxpayer to deduct, in the taxable year in which the taxpayer begins an active trade or business, an amount equal to the lesser of (1) the amount of the start-up expenditures that relate to the active trade or business, or (2) $5,000, reduced (but not below zero) by the amount by which the start-up expenditures exceed $50,000. The remainder of the start-up expenditures is deductible ratably over the 180-month period beginning with the month in which the active trade or business begins.

As amended by section 902(b) of the Act, section 248(a) allows an electing corporation to deduct, in the taxable year in which the corporation begins business, an amount equal to the lesser of (1) the amount of the organizational expenditures of the corporation, or (2) $5,000, reduced (but not below zero) by the amount by which the organizational expenditures exceed $50,000. The remainder of the organizational expenditures is deductible ratably over the 180-month period beginning with the month in which the corporation begins business.

As amended by section 902(c) of the Act, section 709(b) allows an electing partnership to deduct, in the taxable year in which the partnership begins business, an amount equal to the lesser of (1) the amount of the organizational expenses of the partnership, or (2) $5,000, reduced (but not below zero) by the amount by which the organizational expenses exceed $50,000. The remainder of the organizational expenses is deductible ratably over the 180-month period beginning with the month in which the partnership begins business.

Explanation of Provisions

This Treasury decision revises the regulations under sections 195, 248, and 709 to reflect the amendments made by section 902 of the Act. This Treasury decision also updates the manner in which taxpayers elect to deduct costs under sections 195, 248, and 709. Under these regulations, taxpayers are no longer required to file a separate election statement to deduct costs under sections 195, 248, and 709. The manner of filing these elections is changed because of various electronic return filing initiatives and in acknowledgment that the vast majority of taxpayers that incur costs that may be deducted under sections 195, 248, and 709 elect to deduct those costs. The change also reduces the administrative burden of making the elections.

The temporary regulations under sections 195, 248, and 709 apply to expenditures paid or incurred after September 8, 2008. However, taxpayers may apply all the provisions of these regulations to expenditures paid or incurred under sections 195, 248, and 709 after October 22, 2004, provided the period of limitations on assessment of tax has not expired for the year the election under section 195, 248, or 709 is deemed made. Expenditures paid or incurred on or before October 22, 2004, may be amortized over a period of not less than 60 months as provided for under prior law.

Temporary Regulations Under Section 195

Section 195(a) provides that, except as otherwise provided in section 195, no deduction shall be allowed for start-up expenditures. Under section 195(b)(1), a taxpayer may elect to deduct start-up expenditures as provided in sections 195(b)(1)(A) and (B). Section 195(b)(1)(A) allows an electing taxpayer to deduct start-up expenditures in the year in which the active trade or business to which the expenditures relate begins. The amount that may be deducted under section 195(b)(1)(A) in that year is the lesser of the amount of the start-up expenditures or $5,000, reduced (but not below zero) by the amount by which the start-up expenditures exceed $50,000. Any start-up expenditures that are not deductible under section 195(b)(1)(A) may be deducted by the taxpayer under section 195(b)(1)(B) ratably over the 180-month period beginning with the month in which the active trade or business begins. All start-up expenditures incurred by the taxpayer that relate to the active trade or business are considered in determining whether the start-up expenditures exceed $50,000, including expenditures incurred on or before October 22, 2004.

For start-up expenditures as defined in section 195(c)(1) paid or incurred after September 8, 2008, the temporary regulations under section 195 provide that a taxpayer is deemed to make an election under section 195(b) to deduct start-up expenditures for the taxable year in which the active trade or business to which the expenditures relate begins. Therefore, under the temporary regulations a taxpayer is no longer required to attach a statement to the return or specifically identify the deducted amount as start-up expenditures for the election under section 195(b) to be effective. A taxpayer may choose to forgo the deemed election by clearly electing to capitalize its start-up expenditures on a timely filed Federal income tax return (including extensions) for the taxable year in which the active trade or business begins. The election to capitalize start-up expenditures is made in accordance with the form and instructions used by the taxpayer to file its Federal income tax return. An election either to deduct start-up expenditures under section 195(b) or to capitalize start-up expenditures is irrevocable and applies to all start-up expenditures of the taxpayer that are related to the active trade or business.

In general, a change in the characterization of an item as a start-up expenditure, or a change in the determination of the taxable year in which the active trade or business begins, will be treated as a change in method of accounting with a section 481(a) adjustment.

Temporary Regulations Under Section 248

In general, the organizational expenditures of a corporation are not deductible except as provided in section 248. Under section 248(a), a corporation may elect to deduct organizational expenditures as provided in sections 248(a)(1)(A) and (B). Section 248(a)(1)(A) allows an electing corporation to deduct organizational expenditures in the year in which the corporation begins business. The amount that may be deducted under section 248(a)(1)(A) in that year is the lesser of the amount of the organizational expenditures of the corporation or $5,000, reduced (but not below zero) by the amount by which the organizational expenditures exceed $50,000. Any organizational expenditures that are not deductible under section 248(a)(1)(A) may be deducted by the corporation under section 248(a)(1)(B) ratably over the 180-month period beginning with the month in which the corporation begins business. All organizational expenditures incurred by the corporation are considered in determining whether the organizational expenditures exceed $50,000, including expenditures incurred on or before October 22, 2004.

For organizational expenditures as defined in section 248(b) and § 1.248–1(b) paid or incurred after September 8, 2008, the temporary regulations under section 248 provide that a corporation is deemed to make an election under section 248(a) to deduct organizational expenditures for the taxable year in which the corporation begins business. Therefore, under the temporary regulations a corporation is no longer required to attach a statement to the return or specifically identify the deducted amount as organizational expenditures for the election under section 248(a) to be effective. A corporation may choose to forgo the deemed election by clearly electing to capitalize its organizational expenditures on a timely filed Federal income tax return (including extensions) for the taxable year in which the corporation begins business. The election to capitalize organizational expenditures is made in accordance with the form and instructions used by the corporation to file its Federal income tax return. An election either to deduct organizational expenditures under section 248(a) or to capitalize organizational expenditures is irrevocable and applies to all organizational expenditures of the corporation.

In general, a change in the characterization of an item as an organizational expenditure, or a change in the determination of the taxable year in which the corporation begins business, will be treated as a change in method of accounting with a section 481(a) adjustment.

Temporary Regulations Under Section 709

Section 709(a) provides that, except as otherwise provided in section 709(b), no deduction shall be allowed for organizational expenses. Under section 709(b), a partnership may elect to deduct organizational expenses as provided in section 709(b)(1)(A) and (B). Section 709(b)(1)(A) allows an electing partnership to deduct organizational expenses in the year in which the partnership begins business. The amount that may be deducted under section 709(b)(1)(A) in that year is the lesser of the amount of the organizational expenses of the partnership or $5,000, reduced (but not below zero) by the amount by which the organizational expenses exceed $50,000. Any organizational expenses that are not deductible under section 709(b)(1)(A) may be deducted by the partnership under section 709(b)(1)(B) ratably over the 180-month period beginning with the month in which the partnership begins business. All organizational expenses incurred by the partnership are considered in determining whether the organizational expenses exceed $50,000, including expenses incurred on or before October 22, 2004.

For organizational expenses as defined in section 709(b)(3) and § 1.709–2(a) paid or incurred after September 8, 2008, the temporary regulations under section 709 provide that a partnership is deemed to make an election under section 709(b) to deduct organizational expenses for the taxable year in which the partnership begins business. Therefore, under the temporary regulations a partnership is no longer required to attach a statement to the return or specifically identify the deducted amount as organizational expenses for the election under section 709(b) to be effective. A partnership may choose to forgo the deemed election by clearly electing to capitalize its organizational expenses on a timely filed Federal income tax return (including extensions) for the taxable year in which the partnership begins business. The election to capitalize organizational expenses is made in accordance with the form and instructions used by the partnership to file its Federal income tax return. An election either to deduct organizational expenses under section 709(b) or to capitalize organizational expenses is irrevocable and applies to all organizational expenses of the partnership.

In general, a change in the characterization of an item as an organizational expense, or a change in the determination of the taxable year in which the partnership begins business, will be treated as a change in method of accounting with a section 481(a) adjustment.

Examples

The temporary regulations under sections 195, 248, and 709 contain examples that illustrate how the election is made, how to calculate the amount of the deduction that is allowed in the year in which the election is made, and how to effect subsequent redeterminations in the characterization of an item or the year in which the trade or business begins.

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. Please refer to the cross-referenced notice of proposed rulemaking published elsewhere in this issue of the **Federal Register** for applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6). Pursuant to section 7805(f) of the Code, these final and temporary regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Grace Matuszeski of the Office of the Associate Chief Counsel (Income Tax & Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

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

PART 1—INCOME TAXES

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

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

■ **Par. 2.** Section 1.195–1 is revised to read as follows:

§ 1.195–1 Election to amortize start-up expenditures.

[Reserved]. For further guidance, see § 1.195–1T.

■ **Par. 3.** Section 1.195–1T is added to read as follows:

§ 1.195–1T Election to amortize start-up expenditures (temporary).

(a) *In general.* Under section 195(b), a taxpayer may elect to amortize start-up expenditures as defined in section 195(c)(1). In the taxable year in which a taxpayer begins an active trade or business, an electing taxpayer may deduct an amount equal to the lesser of the amount of the start-up expenditures that relate to the active trade or business, or $5,000 (reduced (but not below zero) by the amount by which the start-up expenditures exceed $50,000). The remainder of the start-up expenditures is deductible ratably over the 180-month period beginning with the month in which the active trade or business begins. All start-up expenditures that relate to the active trade or business are considered in determining whether the start-up expenditures exceed $50,000, including expenditures incurred on or before October 22, 2004.

(b) *Time and manner of making election.* A taxpayer is deemed to have made an election under section 195(b) to amortize start-up expenditures as defined in section 195(c)(1) for the taxable year in which the active trade or business to which the expenditures relate begins. A taxpayer may choose to forgo the deemed election by clearly electing to capitalize its start-up expenditures on a timely filed Federal income tax return (including extensions) for the taxable year in which the active trade or business to which the expenditures relate begins. The election either to amortize start-up expenditures under section 195(b) or to capitalize start-up expenditures is irrevocable and applies to all start-up expenditures that are related to the active trade or business. A change in the characterization of an item as a start-up expenditure is a change in method of accounting to which sections 446 and 481(a) apply if the taxpayer treated the item consistently for two or more taxable years. A change in the determination of the taxable year in which the active trade or business begins also is treated as a change in method of accounting if the taxpayer amortized start-up expenditures for two or more taxable years.

(c) *Examples.* The following examples illustrate the application of this section:

Example 1. Expenditures of $5,000 or less. Corporation X, a calendar year taxpayer, incurs $3,000 of start-up expenditures after October 22, 2004, that relate to an active trade or business that begins on July 1, 2009. Under paragraph (b) of this section, Corporation X is deemed to have elected to deduct start-up expenditures under section 195(b) in 2009. Therefore, Corporation X may deduct the entire amount of the start-up expenditures in 2009, the taxable year in which the active trade or business begins.

Example 2. Expenditures of more than $5,000 but less than or equal to $50,000. The facts are the same as in *Example 1* except that Corporation X incurs start-up expenditures of $41,000. Under paragraph (b) of this section, Corporation X is deemed to have elected to deduct start-up expenditures under section 195(b) in 2009. Therefore, Corporation X may deduct $5,000 and the portion of the remaining $36,000 that is allocable to July through December of 2009 ($36,000/180 × 6 = $1,200) in 2009, the taxable year in which the active trade or business begins.

Example 3. Subsequent change in the characterization of an item. The facts are the same as in *Example 2* except that Corporation X determines in 2011 that Corporation X incurred $10,000 for an additional start-up expenditure erroneously deducted in 2009 under section 162 as a business expense. Under paragraph (b) of this section, Corporation X is deemed to have elected to amortize start-up expenditures under section 195(b) in 2009, including the additional $10,000 of start-up expenditures. Corporation X is using an impermissible method of accounting for the additional $10,000 of start-up expenditures and must change its method under § 1.446–1(e) and the applicable general administrative procedures in effect in 2011.

Example 4. Subsequent redetermination of year in which business begins. The facts are the same as in *Example 2* except that, in 2010, Corporation X deducted the start-up expenditures allocable to January through December of 2010 ($36,000/180 × 12 = $2,400). In addition, in 2011 it is determined that Corporation X actually began business in 2010. Under paragraph (b) of this section, Corporation X is deemed to have elected to deduct start-up expenditures under section 195(b) in 2010. Corporation X impermissibly deducted start-up expenditures in 2009, and incorrectly determined the amount of start-up expenditures deducted in 2010. Therefore, Corporation X is using an impermissible method of accounting for the start-up expenditures and must change its method under § 1.446–1(e) and the applicable general administrative procedures in effect in 2011.

Example 5. Expenditures of more than $50,000 but less than or equal to $55,000. The facts are the same as in *Example 1* except that Corporation X incurs start-up expenditures of $54,500. Under paragraph (b) of this section, Corporation X is deemed to have elected to deduct start-up expenditures under section 195(b) in 2009. Therefore, Corporation X may deduct $500 ($5,000 − 4,500) and the portion of the remaining $54,000 that is allocable to July through December of 2009 ($54,000/180 × 6 = $1,800) in 2009, the taxable year in which the active trade or business begins.

Example 6. Expenditures of more than $55,000. The facts are the same as in *Example 1* except that Corporation X incurs start-up expenditures of $450,000. Under paragraph (b) of this section, Corporation X is deemed to have elected to deduct start-up expenditures under section 195(b) in 2009. Therefore, Corporation X may deduct the amounts allocable to July through December of 2009 ($450,000/180 × 6 = $15,000) in 2009, the taxable year in which the active trade or business begins.

(d) *Effective/applicability date.* This section applies to start-up expenditures paid or incurred after September 8, 2008. However, taxpayers may apply all the provisions of this section to start-up expenditures paid or incurred after October 22, 2004, provided that the period of limitations on assessment of tax for the year the election under paragraph (b) of this section is deemed made has not expired. Otherwise, for start-up expenditures paid or incurred prior to September 8, 2008, see § 1.195–1 in effect prior to that date (§ 1.195–1 as contained in 26 CFR part 1 edition revised as of April 1, 2008).

(e) *Expiration date.* This section expires on July 7, 2011.

■ **Par. 4.** Section 1.248–1 is amended by revising paragraphs (a) and (c), and adding paragraphs (d), (e), (f), and (g) to read as follows:

§ 1.248–1 Election to amortize organizational expenditures.

(a) [Reserved]. For further guidance, see § 1.248–1T(a).

* * * * *

(c) through (g) [Reserved]. For further guidance, see § 1.248–1T(c) through (g).

■ **Par. 5.** Section 1.248–1T is added to read as follows:

§ 1.248–1T Election to amortize organizational expenditures (temporary).

(a) *In general.* Under section 248(a), a corporation may elect to amortize organizational expenditures as defined in section 248(b) and § 1.248–1(b). In the taxable year in which a corporation begins business, an electing corporation may deduct an amount equal to the lesser of the amount of the organizational expenditures of the corporation, or $5,000 (reduced (but not below zero) by the amount by which the organizational expenditures exceed $50,000). The remainder of the

organizational expenditures is deducted ratably over the 180-month period beginning with the month in which the corporation begins business. All organizational expenditures of the corporation are considered in determining whether the organizational expenditures exceed $50,000, including expenditures incurred on or before October 22, 2004.

(b) [Reserved]. For further guidance, see § 1.248–1(b).

(c) *Time and manner of making election.* A corporation is deemed to have made an election under section 248(a) to amortize organizational expenditures as defined in section 248(b) and § 1.248–1(b) for the taxable year in which the corporation begins business. A corporation may choose to forgo the deemed election by clearly electing to capitalize its organizational expenditures on a timely filed Federal income tax return (including extensions) for the taxable year in which the corporation begins business. The election either to amortize organizational expenditures under section 248(a) or to capitalize organizational expenditures is irrevocable and applies to all organizational expenditures of the corporation. A change in the characterization of an item as an organizational expenditure is a change in method of accounting to which sections 446 and 481(a) apply if the corporation treated the item consistently for two or more taxable years. A change in the determination of the taxable year in which the corporation begins business also is treated as a change in method of accounting if the corporation amortized organizational expenditures for two or more taxable years.

(d) *Determination of when corporation begins business.* The deduction allowed under section 248 must be spread over a period beginning with the month in which the corporation begins business. The determination of the date the corporation begins business presents a question of fact which must be determined in each case in light of all the circumstances of the particular case. The words ''begins business,'' however, do not have the same meaning as ''in existence.'' Ordinarily, a corporation begins business when it starts the business operations for which it was organized; a corporation comes into existence on the date of its incorporation. Mere organizational activities, such as the obtaining of the corporate charter, are not alone sufficient to show the beginning of business. If the activities of the corporation have advanced to the extent necessary to establish the nature of its business operations, however, it will be deemed to have begun business. For example, the acquisition of operating assets which are necessary to the type of business contemplated may constitute the beginning of business.

(e) *Examples.* The following examples illustrate the application of this section:

Example 1. Expenditures of $5,000 or less. Corporation X, a calendar year taxpayer, incurs $3,000 of organizational expenditures after October 22, 2004, and begins business on July 1, 2009. Under paragraph (c) of this section, Corporation X is deemed to have elected to deduct organizational expenditures under section 248(a) in 2009. Therefore, Corporation X may deduct the entire amount of the organizational expenditures in 2009, the taxable year in which Corporation X begins business.

Example 2. Expenditures of more than $5,000 but less than or equal to $50,000. The facts are the same as in *Example 1* except that Corporation X incurs organizational expenditures of $41,000. Under paragraph (c) of this section, Corporation X is deemed to have elected to deduct organizational expenditures under section 248(a) in 2009. Therefore, Corporation X may deduct $5,000 and the portion of the remaining $36,000 that is allocable to July through December of 2009 ($36,000/180 × 6 = $1,200) in 2009, the taxable year in which Corporation X begins business.

Example 3. Subsequent change in the characterization of an item. The facts are the same as in *Example 2* except that Corporation X determines in 2011 that Corporation X incurred $10,000 for an additional organizational expenditure erroneously deducted in 2009 under section 162 as a business expense. Under paragraph (c) of this section, Corporation X is deemed to have elected to amortize organizational expenditures under section 248(a) in 2009, including the additional $10,000 of organizational expenditures. Corporation X is using an impermissible method of accounting for the additional $10,000 of organizational expenditures and must change its method under § 1.446–1(e) and the applicable general administrative procedures in effect in 2011.

Example 4. Subsequent redetermination of year in which business begins. The facts are the same as in *Example 2* except that, in 2010, Corporation X deducted the organizational expenditures allocable to January through December of 2010 ($36,000/180 × 12 = $2,400). In addition, in 2011 it is determined that Corporation X actually began business in 2010. Under paragraph (c) of this section, Corporation X is deemed to have elected to deduct organizational expenditures under section 248(a) in 2010. Corporation X impermissibly deducted organizational expenditures in 2009, and incorrectly determined the amount of organizational expenditures deducted in 2010. Therefore, Corporation X is using an impermissible method of accounting for the organizational expenditures and must change its method under § 1.446–1(e) and the applicable general administrative procedures in effect in 2011.

Example 5. Expenditures of more than $50,000 but less than or equal to $55,000. The facts are the same as in *Example 1* except that Corporation X incurs organizational expenditures of $54,500. Under paragraph (c) of this section, Corporation X is deemed to have elected to deduct organizational expenditures under section 248(a) in 2009. Therefore, Corporation X may deduct $500 ($5,000 − 4,500) and the portion of the remaining $54,000 that is allocable to July through December of 2009 ($54,000/180 × 6 = $1,800) in 2009, the taxable year in which Corporation X begins business.

Example 6. Expenditures of more than $55,000. The facts are the same as in *Example 1* except that Corporation X incurs organizational expenditures of $450,000. Under paragraph (c) of this section, Corporation X is deemed to have elected to deduct organizational expenditures under section 248(a) in 2009. Therefore, Corporation X may deduct the amounts allocable to July through December of 2009 ($450,000/180 × 6 = $15,000) in 2009, the taxable year in which Corporation X begins business.

(f) *Effective/applicability date.* This section applies to organizational expenditures paid or incurred after September 8, 2008. However, taxpayers may apply all the provisions of this section to organizational expenditures paid or incurred after October 22, 2004, provided that the period of limitations on assessment of tax for the year the election under paragraph (c) of this section is deemed made has not expired. Otherwise, for organizational expenditures paid or incurred prior to September 8, 2008, see § 1.248–1 in effect prior to that date (§ 1.248–1 as contained in 26 CFR part 1 edition revised as of April 1, 2008).

(g) *Expiration date.* This section expires on *July 7, 2011.*

■ **Par. 6.** Section 1.709–1 is amended by revising paragraph (b) and removing paragraph (c) to read as follows:

§ 1.709–1 Treatment of organization and syndication costs.

* * * * *

(b) [Reserved]. For further guidance, see § 1.709–1T.

■ **Par. 7.** Section 1.709–1T is added to read as follows:

§ 1.709–1T Treatment of organizational expenses and syndication costs (temporary).

(a) [Reserved]. For further guidance, see § 1.709–1(a).

(b) *Election to amortize organizational expenses*—(1) *In general.* Under section 709(b), a partnership may elect to amortize organizational expenses as defined in section 709(b)(3) and § 1.709–2(a). In the taxable year in which a partnership begins business, an

electing partnership may deduct an amount equal to the lesser of the amount of the organizational expenses of the partnership, or $5,000 (reduced (but not below zero) by the amount by which the organizational expenses exceed $50,000). The remainder of the organizational expenses is deductible ratably over the 180-month period beginning with the month in which the partnership begins business. All organizational expenses of the partnership are considered in determining whether the organizational expenses exceed $50,000, including expenses incurred on or before October 22, 2004.

(2) *Time and manner of making election.* A partnership is deemed to have made an election under section 709(b) to amortize organizational expenses as defined in section 709(b)(3) and § 1.709–2(a) for the taxable year in which the partnership begins business. A partnership may choose to forgo the deemed election by clearly electing to capitalize its organizational expenses on a timely filed Federal income tax return (including extensions) for the taxable year in which the partnership begins business. The election either to amortize organizational expenses under section 709(b) or to capitalize organizational expenses is irrevocable and applies to all organizational expenses of the partnership. A change in the characterization of an item as an organizational expense is a change in method of accounting to which sections 446 and 481(a) apply if the partnership treated the item consistently for two or more taxable years. A change in the determination of the taxable year in which the partnership begins business also is treated as a change in method of accounting if the partnership amortized organizational expenses for two or more taxable years.

(3) *Liquidation of partnership.* If there is a winding up and complete liquidation of the partnership prior to the end of the amortization period, the unamortized amount of organizational expenses is a partnership deduction in its final taxable year to the extent provided under section 165 (relating to losses). However, there is no partnership deduction with respect to its capitalized syndication expenses.

(4) *Examples.* The following examples illustrate the application of this section:

Example 1. Expenditures of $5,000 or less. Partnership X, a calendar year taxpayer, incurs $3,000 of organizational expenses after October 22, 2004, and begins business on July 1, 2009. Under paragraph (b)(2) of this section, Partnership X is deemed to have elected to deduct organizational expenses under section 709(b) in 2009. Therefore, Partnership X may deduct the entire amount of the organizational expenses in 2009, the taxable year in which Partnership X begins business.

Example 2. Expenditures of more than $5,000 but less than or equal to $50,000. The facts are the same as in *Example 1* except that Partnership X incurs organizational expenses of $41,000. Under paragraph (b)(2) of this section, Partnership X is deemed to have elected to deduct organizational expenses under section 709(b) in 2009. Therefore, Partnership X may deduct $5,000 and the portion of the remaining $36,000 that is allocable to July through December of 2009 ($36,000/180 × 6 = $1,200) in 2009, the taxable year in which Partnership X begins business.

Example 3. Subsequent change in the characterization of an item. The facts are the same as in *Example 2* except that Partnership X realizes in 2011 that Partnership X incurred $10,000 for an additional organizational expense erroneously deducted in 2009 under section 162 as a business expense. Under paragraph (b)(2) of this section, Partnership X is deemed to have elected to amortize organizational expenses under section 709(b) in 2009, including the additional $10,000 of organizational expenses. Partnership X is using an impermissible method of accounting for the additional $10,000 of organizational expenses and must change its method under § 1.446–1(e) and the applicable general administrative procedures in effect in 2011.

Example 4. Subsequent redetermination of year in which business begins. The facts are the same as in *Example 2* except that, in 2010, Partnership X deducted the organizational expenses allocable to January through December of 2010 ($36,000/180 × 12 = $2,400). In addition, in 2011 it is determined that Partnership X actually began business in 2010. Under paragraph (b)(2) of this section, Partnership X is deemed to have elected to deduct organizational expenses under section 709(b) in 2010. Partnership X impermissibly deducted organizational expenses in 2009, and incorrectly determined the amount of organizational expenses deducted in 2010. Therefore, Partnership X is using an impermissible method of accounting for the organizational expenses and must change its method under § 1.446–1(e) and the applicable general administrative procedures in effect in 2011.

Example 5. Expenditures of more than $50,000 but less than or equal to $55,000. The facts are the same as in *Example 1* except that Partnership X incurs organizational expenses of $54,500. Under paragraph (b)(2) of this section, Partnership X is deemed to have elected to deduct organizational expenses under section 709(b) in 2009. Therefore, Partnership X may deduct $500 ($5,000 − 4,500) and the portion of the remaining $54,000 that is allocable to July through December of 2009 ($54,000/180 × 6 = $1,800) in 2009, the taxable year in which Partnership X begins business.

Example 6. Expenditures of more than $55,000. The facts are the same as in *Example 1* except that Partnership X incurs organizational expenses of $450,000. Under paragraph (b)(2) of this section, Partnership X is deemed to have elected to deduct organizational expenses under section 709(b) in 2009. Therefore, Partnership X may deduct the amounts allocable to July through December of 2009 ($450,000/180 × 6 = $15,000) in 2009, the taxable year in which Partnership X begins business.

(5) *Effective/applicability date.* This section applies to organizational expenses paid or incurred after September 8, 2008. However, taxpayers may apply all the provisions of this section to organizational expenses paid or incurred after October 22, 2004, provided that the period of limitations on assessment of tax for the year the election under paragraph (b)(2) of this section is deemed made has not expired. Otherwise, for organizational expenses paid or incurred prior to September 8, 2008, see § 1.709–1 in effect prior to that date (§ 1.709–1 as contained in 26 CFR part 1 edition revised as of April 1, 2008).

(6) *Expiration date.* This section expires on July 7, 2011.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

Approved: June 30, 2008.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E8–15459 Filed 7–7–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9410]

RIN 1545–BF54

Change to Office to Which Notices of Nonjudicial Sale and Requests for Return of Wrongfully Levied Property Must Be Sent

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to the discharge of liens under section 7425 and return of wrongfully levied upon property under section 6343 of the Internal Revenue Code (Code) of 1986. These regulations revise regulations currently published under sections 7425 and 6343. These regulations clarify that such notices and claims should be sent to the IRS official and office specified in the relevant IRS publications. The regulations will affect parties seeking to provide the IRS with

notice of a nonjudicial foreclosure sale and parties making administrative requests for return of wrongfully levied property.

DATES: *Effective Date:* These regulations are effective on July 8, 2008.

Applicability Date: See §§ 301.6343–2 and 301.6343–3.

FOR FURTHER INFORMATION CONTACT: Robin M. Ferguson, (202) 622–3630 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations amending the Procedure and Administration Regulations (26 CFR part 301) relating to the giving of notice of nonjudicial sales under section 7425(b) of the Code. This document also contains final regulations amending the Procedure and Administration Regulations relating to requests for return of wrongfully levied property under section 6343(b) of the Code. On July 20, 2007, temporary regulations (TD 9344) were published in the **Federal Register** (72 FR 39737). A notice of proposed rulemaking (REG–148951–05) cross-referencing the temporary regulations was published in the **Federal Register** on the same day (72 FR 39771). No written comments were received from the public in response to the notice of proposed rulemaking. No public hearing was requested, scheduled or held. The proposed regulations are adopted as amended by this Treasury decision, and the corresponding temporary regulations are removed.

For notices of nonjudicial foreclosure sale under section 7425(b) and requests for return of property wrongfully levied upon under section 6343(b), the existing regulations direct the notices and requests to be sent to the ''district director (marked for the attention of the Chief, Special Procedures Staff).'' The offices of the district director and Special Procedures were eliminated by the IRS reorganization implemented pursuant to the IRS Restructuring and Reform Act of 1998, Public Law 105–206 (RRA 1998), creating uncertainty as to the timeliness of notices and requests under these provisions.

Comments on the Proposed Regulations

None.

Modifications of the Proposed Regulations

None, other than minor grammatical revisions.

Effective/Applicability Date

These regulations are effective on July 8, 2008.

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 on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations have been 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 Robin M. Ferguson, Office of 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 * * *

■ **Par. 2.** Section 301.6343–2 is amended as follows:

■ 1. Paragraphs (a)(1) introductory text and (b) introductory text are revised.

■ 2. Paragraph (e) is revised.

The revisions read as follows:

§ 301.6343–2 Return of wrongfully levied upon property.

(a) *Return of property*—(1) *General rule.* If the Internal Revenue Service (IRS) determines that property has been wrongfully levied upon, the IRS may return—

* * * * *

(b) *Request for return of property.* A written request for the return of property wrongfully levied upon must be given to the IRS official, office and address specified in IRS Publication 4528, ''Making an Administrative Wrongful Levy Claim Under Internal Revenue Code (IRC) Section 6343(b),'' or any successor publication. The relevant IRS publications may be downloaded from the IRS internet site at *http://www.irs.gov.* Under this section, a request for the return of property wrongfully levied upon is not effective if it is given to an office other than the office listed in the relevant publication. The written request must contain the following information—

* * * * *

(e) *Effective/applicability date.* These regulations are effective on July 8, 2008.

§ 301.6343–2T [Removed].

■ **Par. 3.** Section 301.6343–2T is removed.

■ **Par. 4.** Section 301.7425–3 is amended as follows:

■ 1. Paragraphs (a)(1), (b)(1), (b)(2), (c)(1), (d)(2), (d)(3), and (d)(4) are revised.

■ 2. Paragraph (a)(2)(iii) *Example 2* is amended by removing the language ''district director'' and adding the language ''IRS'' in its place wherever it appears.

■ 3. Paragraph (e) is revised.

The revisions and additions read as follows:

§ 301.7425–3 Discharge of liens; special rules.

(a) *Notice of sale requirements*—(1) *In general.* Except in the case of the sale of perishable goods described in paragraph (c) of this section, a notice (as described in paragraph (d) of this section) of a nonjudicial sale shall be given, in writing by registered or certified mail or by personal service, not less than 25 days prior to the date of sale (determined under the provisions of § 301.7425–2(b)), to the Internal Revenue Service (IRS) official, office and address specified in IRS Publication 786, ''Instructions for Preparing a Notice of Nonjudicial Sale of Property and Application for Consent to Sale,'' or any successor publication. The relevant IRS publications may be downloaded from the IRS Internet site at *http://www.irs.gov.* Under this section, a notice of sale is not effective if it is given to an office other than the office listed in the relevant publication. The provisions of sections 7502 (relating to timely mailing treated as timely filing) and 7503 (relating to time for performance of acts where the last day falls on Saturday, Sunday, or a legal holiday) apply in the case of notices required to be made under this paragraph.

* * * * *

(b) *Consent to sale*—(1) *In general.* Notwithstanding the notice of sale provisions of paragraph (a) of this section, a nonjudicial sale of property

shall discharge or divest the property of the lien and title of the United States if the IRS consents to the sale of the property free of the lien or title. Pursuant to section 7425(c)(2), where adequate protection is afforded the lien or title of the United States, the IRS may, in its discretion, consent with respect to the sale of property in appropriate cases. Such consent shall be effective only if given in writing and shall be subject to such limitations and conditions as the IRS may require. However, the IRS may not consent to a sale of property under this section after the date of sale, as determined under § 301.7425–2(b). For provisions relating to the authority of the IRS to release a lien or discharge property subject to a tax lien, see section 6325 and the section 6325 regulations.

(2) *Application for consent.* Any person desiring the IRS's consent to sell property free of a tax lien or a title derived from the enforcement of a tax lien of the United States in the property shall submit to the IRS, at the office and address specified in the relevant IRS publications, a written application, in triplicate, declaring that it is made under penalties of perjury, and requesting that such consent be given. The application shall contain the information required in the case of a notice of sale, as set forth in paragraph (d)(1) of this section, and, in addition, shall contain a statement of the reasons why the consent is desired.

(c) *Sale of perishable goods*—(1) *In general.* A notice (as described in paragraph (d) of this section) of a nonjudicial sale of perishable goods (as defined in paragraph (c)(2) of this section) shall be given in writing, by registered or certified mail or delivered by personal service, at any time before the sale, to the IRS official and office specified in the relevant IRS publications, at the address specified in such publications. Under this section, a notice of sale is not effective if it is given to an office other than the office listed in the relevant publication. If a notice of a nonjudicial sale is timely given in the manner described in this paragraph, the nonjudicial sale shall discharge or divest the tax lien, or a title derived from the enforcement of a tax lien, of the United States in the property. The provisions of sections 7502 (relating to timely mailing treated as timely filing) and 7503 (relating to time for performance of acts where the last day falls on Saturday, Sunday, or a legal holiday) apply in the case of notices required to be made under this paragraph. The seller of the perishable goods shall hold the proceeds (exclusive of costs) of the sale as a fund, for not less than 30 days after the date of the sale, subject to the liens and claims of the United States, in the same manner and with the same priority as the liens and claims of the United States had with respect to the property sold. If the seller fails to hold the proceeds of the sale in accordance with the provisions of this paragraph and if the IRS asserts a claim to the proceeds within 30 days after the date of sale, the seller shall be personally liable to the United States for an amount equal to the value of the interest of the United States in the fund. However, even if the proceeds of the sale are not so held by the seller, but all the other provisions of this paragraph are satisfied, the buyer of the property at the sale takes the property free of the liens and claims of the United States. In the event of a postponement of the scheduled sale of perishable goods, the seller is not required to notify the IRS of the postponement. For provisions relating to the authority of the IRS to release a lien or discharge property subject to a tax lien, see section 6325 and the regulations.

* * * * *

(d) * * *

(2) *Inadequate notice.* Except as otherwise provided in this paragraph, a notice of sale described in paragraph (a) of this section that does not contain the information described in paragraph (d)(1) of this section shall be considered inadequate by the IRS. If the IRS determines that the notice is inadequate, the IRS will give written notification of the items of information which are inadequate to the person who submitted the notice. A notice of sale that does not contain the name and address of the person submitting such notice shall be considered to be inadequate for all purposes without notification of any specific inadequacy. In any case where a notice of sale does not contain the information required under paragraph (d)(1)(ii) of this section with respect to a Notice of Federal Tax Lien, the IRS may give written notification of such omission without specification of any other inadequacy and such notice of sale shall be considered inadequate for all purposes. In the event the IRS gives notification that the notice of sale is inadequate, a notice complying with the provisions of this section (including the requirement that the notice be given not less than 25 days prior to the sale in the case of a notice described in paragraph (a) of this section) must be given. However, in accordance with the provisions of paragraph (b)(1) of this section, in such a case the IRS may, in its discretion, consent to the sale of the property free of the lien or title of the United States even though notice of the sale is given less than 25 days prior to the sale. In any case where the person who submitted a timely notice, which indicates his name and address, does not receive more than 5 days prior to the date of sale written notification from the IRS that the notice is inadequate, the notice shall be considered adequate for purposes of this section.

(3) *Acknowledgment of notice.* If a notice of sale described in paragraph (a) or (c) of this section is submitted in duplicate to the IRS with a written request that receipt of the notice be acknowledged and returned to the person giving the notice, this request will be honored by the IRS. The acknowledgment by the IRS will indicate the date and time of the receipt of the notice.

(4) *Disclosure of adequacy of notice.* The IRS is authorized to disclose, to any person who has a proper interest, whether an adequate notice of sale was given under paragraph (d)(1) of this section. Any person desiring this information should submit to the IRS a written request that clearly describes the property sold or to be sold, identifies the applicable notice of lien, gives the reasons for requesting the information, and states the name and address of the person making the request. The request should be submitted to the IRS official, office and address specified in IRS Publication 4235, ''Technical Services (Advisory) Group Addresses,'' or any successor publication. The relevant IRS publications may be downloaded from the IRS Internet site at *http://www.irs.gov.*

(e) *Effective/applicability date.* These regulations are effective on July 8, 2008.

§ 301.7425–3T [Removed].

■ **Par. 5.** Section 301.7425–3T is removed.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

Approved: June 30, 2008.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E8–15460 Filed 7–7–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

[PA–151–FOR; Docket ID: OSM–2008–0013]

Pennsylvania Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; disapproval of amendment and reinstatement of a required amendment

SUMMARY: We are disapproving two changes to the Pennsylvania regulatory program (the ''Pennsylvania program'') regulations under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act) which were previously submitted under amendment PA–147–FOR. While we approved the other proposed changes related to PA–147–FOR, we deferred our decision on two changes pertaining to the discontinuation of a $100 per acre reclamation fee pending the outcome of litigation before the United States Court of Appeals for the Third Circuit in the matter of *Pennsylvania Federation of Sportsmen's Clubs Inc. et al.* v. *Norton, (PFSC* v. *Norton)* No. 06–1780. We now have the U.S. Court of Appeals decision before us. The decision sets aside our October 7, 2003, final rule removing a required amendment pertaining to the Pennsylvania alternative bonding system. Therefore, we are now disapproving the two changes pertaining to the discontinuation of the fee. We are also reinstating a required amendment that has been modified to be consistent with the court's decision.

DATES: *Effective Date:* July 8, 2008.

FOR FURTHER INFORMATION CONTACT: George Rieger, Chief, Pittsburgh Field Division, Telephone: (717) 782–4036, e-mail: grieger@osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Pennsylvania Program
II. Submission of the Original Amendment
III. Court Decision
IV. OSM's Findings
V. Summary and Disposition of Comments
VI. OSM's Decision
VII. Procedural Determinations

I. Background on the Pennsylvania Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Pennsylvania program on July 30, 1982.

From 1982 until 2001, Pennsylvania's bonding program for surface coal mines, coal refuse reprocessing operations and coal preparation plants, was funded under an Alternative Bonding System (ABS), which included a central pool of money (Surface Mining Conservation and Reclamation Fund) used for reclamation. This pool was funded in part by a per-acre reclamation fee paid by operators of permitted sites and supplemented by site bonds posted by those operators for each mine site. This is the reclamation fee, established at 25 Pa. Code 86.17(e), that Pennsylvania proposed to eliminate.

In 1991, our oversight activities determined that Pennsylvania's ABS contained unfunded reclamation liabilities for backfilling, grading, and revegetation and we determined that the ABS was financially incapable of abating or treating pollutional discharges from bond forfeiture sites under its purview. As a result, on May 31, 1991, we imposed the required amendment codified at 30 CFR 938.16(h). That amendment required Pennsylvania to demonstrate that the revenues generated by its collection of the reclamation fee would assure that its Surface Mining Conservation and Reclamation Fund (Fund) could be operated in a manner that would meet the ABS requirements contained in 30 CFR 800.11(e). After a decade of trying to address the problems with the ABS, the Pennsylvania Department of Environmental Protection (PADEP) terminated the ABS in 2001 and began converting active surface coal mining permits to a Conventional Bonding System (CBS) or ''full-cost'' bonding program. This CBS requires a permittee to post a site specific bond in an amount sufficient to cover the estimated costs to complete reclamation in the event of bond forfeiture.

OSM published a final rule on October 7, 2003, removing the required amendment at 30 CFR 938.16(h) on the basis that the conversion from an ABS to a CBS rendered the requirement to comply with 30 CFR 800.11(e) moot. Subsequent to these OSM actions, a lawsuit was filed in the U.S. District Court for the Middle District Court of Pennsylvania, *Pennsylvania Federation of Sportsmen's Clubs Inc. et al.* v. *Norton No. 1:03–CV–2220.* It was that case, while initially dismissed by the district court, that ultimately leads to the Third Circuit decision that brings us to this action today.

You can find background information on the Pennsylvania program, including the Secretary's findings, the disposition of comments, and conditions of approval in the July 30, 1982, **Federal Register** (47 FR 33050). You can also find later actions concerning Pennsylvania's program and program amendments at 30 CFR 938.11, 938.12, 938.13, 938.15 and 938.16.

II. Submission of the Original Amendment

By letter dated May 23, 2006, the PADEP sent us an amendment to revise its program regulations at 25 Pennsylvania Code (Pa. Code) (Administrative Record No. PA 793.11). Pennsylvania sent the amendment in response to five required program amendments. The proposed amendment also included four additional changes which were made at Pennsylvania's own initiative. Two of the four additional changes that Pennsylvania proposed concerned money received from reclamation fees intended to supplement a reclamation bond pool.

Because PADEP revised its bonding requirements and is now requiring all mine permits to post a full cost reclamation bond, the PADEP contended that there was no longer a basis for maintaining the reclamation fee. Pennsylvania submitted a request to discontinue the collection of the $100 per acre reclamation fee authorized under 25 Pa. Code 86.17(e) under Amendment No. PA–147–FOR by adding the following sentence ''This fee shall not be required after (effective date of this rulemaking).''

Pennsylvania also amended 25 Pa. Code by removing section 86.283(c) since it referenced the reclamation fee in relation to remining areas for mine operators approved to participate in the financial guarantees program. PADEP submitted the amendment to create consistency with the proposed amendment to 86.17(e) that would delete the reclamation fee.

While we approved the other requested changes related to PA–147–FOR, we deferred our decision on the two changes pertaining to the discontinuation of a $100 per acre reclamation fee. We deferred our decision because Pennsylvania's decision to eliminate its ABS in favor of a CBS had been challenged, and the matter was pending before the United States Court of Appeals for the Third

Circuit in *Pennsylvania Federation of Sportsmen's Clubs* v. *Kempthorne*, No. 06–1780. (*PFSC* v. *Kempthorne*).

Specifically, if the Third Circuit were to rule that Pennsylvania could not discontinue funding for surface coal mining sites where operators defaulted on their reclamation obligations before the conversion to a CBS, and for sites with operators who subsequently default due to failure to obtain adequate full-cost bonds, then OSM could not approve the proposed elimination of the reclamation fee. Therefore, in the interest of judicial economy, we deferred our decision on this proposed change until final disposition of the *PFSC* v. *Kempthorne* matter.

III. Court Decision

On August 2, 2007, the United States Court of Appeals for the Third Circuit decided *PFSC* v. *Kempthorne*, 497 F.3d 337 (3rd Cir. 2007). At issue, relevant to this notice, was whether OSM properly terminated the requirement that Pennsylvania demonstrate that its Surface Mining Conservation and Reclamation Fund was in compliance with 30 CFR 800.11(e).

The Third Circuit concluded: ''while it is true that the 'ABS Fund' continues to exist in name, it no longer operates as an ABS, that is, as a bond pool, to provide liability coverage for new and existing mining sites.'' 497 F.3d at 349. However, the Court went on to ''conclude that 800.11(e) continues to apply to sites forfeited prior to the CBS conversion.'' *Id.* at 353. In commenting further on 30 CFR 800.11(e), the Court stated ''The plain language of this provision requires that Pennsylvania demonstrate adequate funding for mine discharge abatement and treatment at all ABS forfeiture sites.'' *Id.* at 354.

IV. OSM's Findings

PADEP had proposed elimination of the $100 per acre fee given that the ABS had been terminated and active mine sites permitted under the ABS had been converted to full-cost bonding. However, elimination of the $100 per acre fee would essentially eliminate income to the Fund, thus reducing the amount of funds available for the reclamation of the forfeited sites bonded under the Fund. Therefore, an approval of the proposed change at 25 Pa Code 86.17(e) or the deletion of 25 Pa Code 86.283(c) would be in conflict with the Court's decision.

Also, because the Third Circuit decision set aside our 2003 removal of the required amendment at 30 CFR 938.16(h), we are now reinstating an amendment ''(h),'' which has been modified to be consistent with the Court's decision.

V. Summary and Disposition of Comments

Public Comments

We asked for public comments on the original amendment (Administrative Record No. PA 793.17). We received comments from one organization, the Citizens for Pennsylvania's Future (PennFUTURE) (Administrative Record No. PA 793.18). PennFUTURE objected to the portion of the program amendment that would discontinue the collection of Pennsylvania's reclamation fee at 25 Pa. Code 86.17(e), and requested that we defer our decision on this proposed change until such time as the matter of *PFSC* v. *Kempthorne* is decided.

As we noted above, we deferred our decision with respect to the proposed amendment to 86.17(e), as well as on an ancillary proposed change at 86.283(c). With the recent Court decision, we have now concluded that we cannot approve the requested changes.

Federal Agency Comments

Under Federal regulations at 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the original amendment from various Federal agencies with an actual or potential interest in the Pennsylvania program (Administrative Record No. PA 793.12). The Mine Safety and Health Administration (MSHA), District 1, responded (Administrative Record No. PA 793.13) and stated that it did not have any comments or concerns. The Natural Resources Conservation Service responded (Administrative Record No. PA 793.14) and stated that it did not have any comments.

Environmental Protection Agency (EPA) Concurrence and Comments

Under Federal regulations at 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions that Pennsylvania proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment.

On June 6, 2006, we requested comments on the amendment from EPA (Administrative Record No. PA 793.15). The EPA, Region III, responded and stated that it did not identify any inconsistencies with the Clean Water Act or any other statutes or regulations under its jurisdiction.

VI. OSM's Decision

Based on the above findings, we disapprove the amendment Pennsylvania sent to us on May 23, 2006, pertaining to the termination of the collection of the reclamation fee at 25 Pa. Code 86.17(e) and 86.283(c). Because we are disapproving the elimination of the fee, Pennsylvania must continue to collect this fee in accordance with 25 Pa. Code 86.17(e). For the reasons stated above, we are also disapproving the proposed deletion of 25 Pa Code 86.283(c).

We are also reinstating a required amendment formerly codified at 30 CFR 938.16(h), and modifying it to be consistent with the court's decision.

As reinstated, 30 CFR 938.16(h) will provide as follows:

> By September 8, 2008, Pennsylvania must either submit information sufficient to demonstrate that revenues to the Surface Mining Conservation and Reclamation Fund (Fund) are adequate to fulfill outstanding reclamation obligations at forfeited sites for which the Fund provides partial bond coverage under 30 CFR 800.11(e), or amend its program to otherwise meet those outstanding financial obligations at these forfeited sites.

This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VII. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by Section 3 of Executive Order 12988 and has determined that, to the extent allowable by law, this rule meets the applicable standards of Subsections (a) and (b) of that Section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments

because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Government

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects 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. The basis for this determination is that our decision is on a State regulatory program and does not involve a Federal program involving Indian lands.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed State regulatory program provision does not constitute a major Federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA) (42 U.S.C. 4332(2)(c)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior 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.*). The State amendment that is the subject of this rule is based on counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, geographic regions, or Federal, State, or local government agencies; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 23, 2008.

Thomas D. Shope,

Regional Director, Appalachian Region.

■ For the reasons set out in the preamble, 30 CFR part 938 is amended as set forth below:

PART 938—PENNSYLVANIA

■ 1. The authority citation for part 938 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 938.12 is amended by adding paragraph (e) to read as follows:

§ 938.12 State statutory, regulatory, and proposed program amendment provisions not approved.

* * * * *

(e) We are not approving the following amendments that Pennsylvania submitted on May 23, 2006:

(1) At 25 Pa. Code 86.17(e), the sentence ''This fee shall not be required after (effective date of this rulemaking).''

(2) At 25 Pa. Code 86.283(c), the proposed deletion of the entire subsection.

■ 3. Section 938.16 is amended by adding paragraph (h) to read as follows:

§ 938.16 Required regulatory program amendments.

* * * * *

(h) By September 8, 2008, Pennsylvania must either submit information sufficient to demonstrate that revenues to the Surface Mining Conservation and Reclamation Fund (Fund) are adequate to fulfill outstanding reclamation obligations at forfeited sites for which the Fund provides partial bond coverage under 30 CFR 800.11(e), or amend its program to otherwise meet those outstanding financial obligations at these forfeited sites.

* * * * *

[FR Doc. E8–15432 Filed 7–7–08; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has determined that USS NEW HAMPSHIRE (SSN 778) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

DATES: This rule is effective July 8, 2008 and is applicable beginning June 27, 2008.

FOR FURTHER INFORMATION CONTACT: Commander M. Robb Hyde, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave., SE., Suite 3000, Washington Navy Yard, DC 20374–5066, telephone: 202–685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706.

This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS NEW HAMPSHIRE (SSN 778) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 2(a)(i), pertaining to the height placement of the masthead light above the hull; Annex I, paragraph 2(k), pertaining to the height and relative positions of the anchor lights; Annex I, paragraph 3(b), pertaining to the location of the sidelights; and Rule 21(c), pertaining to the location and arc of visibility of the sternlight.

The Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

■ For the reasons set forth in the preamble, amend part 706 of title 32 of the Code of Federal Regulations as follows:

PART 706—CERTIFICATIONS AND EXEMPTIONS UNDER THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972

■ 1. The authority citation for part 706 continues to read:

Authority: 33 U.S.C. 1605.

■ 2. Section 706.2 is amended as follows:

A. In Table One by adding, in numerical order, the following entry for USS NEW HAMPSHIRE (SSN 778); and

B. In Table Three by adding, in numerical order, the following entry for USS NEW HAMPSHIRE (SSN 778):

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE ONE

Vessel	Number	Distance in meters of forward masthead light below minimum required height. § 2(a)(i), Annex I
*	*	*
USS NEW HAMPSHIRE	SSN 778	2.90
*	*	*

* * * * *

TABLE THREE

Vessel	No.	Masthead lights arc of visibility; rule 21(a)	Side lights arc of visibility; rule 21(b)	Stern light arc of visibility; rule 21(c)	Side lights distance inboard of ship's sides in meters 3(b) annex 1	Stern light, distance forward of stern in meters; rule 21(c)	Forward anchor light, height above hull in meters; 2(K) annex 1	Anchor lights relationship of aft light to forward light in meters 2(K) annex 1
*	*		*	*	*	*		*
USS NEW HAMPSHIRE.	SSN 778	Meets Requirement.	Meets Requirement.	205.6°	4.37	11.05	2.8	0.30 below.

TABLE THREE—Continued

Vessel	No.	Masthead lights arc of visibility; rule 21(a)	Side lights arc of visibility; rule 21(b)	Stern light arc of visibility; rule 21(c)	Side lights distance inboard of ship's sides in meters 3(b) annex 1	Stern light, distance forward of stern in meters; rule 21(c)	Forward anchor light, height above hull in meters; 2(K) annex 1	Anchor lights relationship of aft light to forward light in meters 2(K) annex 1
*	*	*	*	*	*	*	*	

Approved: June 27, 2008.

M. Robb Hyde,

Commander, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law).

[FR Doc. E8–15401 Filed 7–7–08; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[Docket No. USCG–2007–0198]

RIN 1625–AA01

Anchorage Regulations; Stonington Maine, Deer Island Thorofare, Penobscot Bay, ME

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard hereby establishes Crotch Island Special Anchorage in Stonington, Maine, on Deer Island Thorofare, Penobscot Bay. This action is necessary to facilitate safe navigation and provide a safe and secure anchorage for vessels of not more than 65 feet in length. This action is intended to increase the safety of life and property on Deer Island Thorofare, improve the safety of anchored vessels, and provide for the overall safe and efficient flow of vessel traffic and commerce.

DATES: This rule is effective August 7, 2008.

ADDRESSES: Comments and materials received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (USCG–2007–0198), and are available for inspection or copying at room 628, First Coast Guard District Boston, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. John J. Mauro, Commander (DPW), First Coast Guard District, 408 Atlantic Ave., Boston, Massachusetts 02110, Telephone (617) 223–8355 or e-mail at *John.J.Mauro@uscg.mil*.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On February 14, 2008, we published a notice of proposed rulemaking (NPRM) entitled ''Anchorage Regulations; Stonington Maine, Deer Island Thorofare, Penobscot Bay, ME'' in the **Federal Register** (73 FR 8633). We received no letters commenting on the proposed rule. No public hearing was requested, and none was held.

Background and Purpose

The rule is intended to reduce the risk of vessel collisions by creating Crotch Island Special Anchorage area to aid the Town of Stonington in enforcing its mooring and boating regulations.

The Coast Guard is designating the special anchorage area in accordance with 33 U.S.C. 471. Under that statute, vessels will not be required to sound signals or exhibit anchor lights or shapes which are otherwise required by rule 30 and 35 of the Inland Navigation Rules, codified at 33 U.S.C. 2030 and 2035.

The Coast Guard has defined the anchorage area contained herein with the advice and consent of the Army Corps of Engineers, Northeast, located at 696 Virginia Rd., Concord, MA 01742.

Regulatory Analyses

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

Regulatory Planning and Review

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

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary.

This finding is based on the fact that this rule conforms to the changing needs of the Town of Stonington, the changing needs of recreational, fishing and commercial vessels, and makes the best use of the available navigable water. This rule is in the interest of safe navigation, protection of moored vessels, protection of the Town of Stonington and the marine environment.

Small Entities

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

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

Assistance for Small Entities

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

If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance; please contact John J. Mauro, at the address listed in **ADDRESSES** above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal Regulatory Enforcement Ombudsman and the

Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph 34(f), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A final ''Categorical Exclusion Determination'' and a final ''Environmental Analysis Check List'' are available in the docket for inspection or copying where indicated under **ADDRESSES**. This rule fits the category selected from paragraph (34)(f) as it would establish one special anchorage area.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 110 as follows:

PART 110—ANCHORAGE REGULATIONS

■ 1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471; 1221 through 1236, 2030, 2035 and 2071; Department of Homeland Security Delegation No. 0170.1.

■ 2. Amend § 110.4 by adding paragraph (c) to read as follows:

§ 110.4 Penobscot Bay, Maine.

* * * * *

(c) *Stonington Harbor, Deer Island Thorofare.* (1) *Crotch Island.* All of the waters bound by the following points beginning at the northeast shore of Crotch Island located at: latitude 44°08′51.0″ N, longitude 068°40′06.0″ W; thence southerly along the shoreline to latitude 44°08′36.0″ N, longitude 068°40′07.02″ W; thence to latitude 44°08′36.0″ N, longitude 068°40′04.02″ W; thence to latitude 44°08′46.98″ N, longitude 068°40′00.0″ W; thence to latitude 44°08′55.02″ N, longitude 068°39′49.02″ W; thence to latitude 44°08′54.0″ N, longitude 068°40′06.0″ W thence back to origin.

DATUM: NAD 83.

(2) [Reserved].

Note to § 110.4(c): An ordinance of the Town of Stonington, Maine requires the approval of the Stonington Harbor Master for the location and type of moorings placed in these special anchorage areas. All anchoring in the areas are under the supervision of the Stonington Harbor Master or other such authority as may be designated by the authorities of the Town of Stonington, Maine. All moorings are to be so placed that no moored vessel will extend beyond the limit of the area.

Dated: June 23, 2008.

Timothy S. Sullivan,

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

[FR Doc. E8–15311 Filed 7–7–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[Docket No. USCG–2007–0199]

RIN 1625–AA01

Anchorage Regulations; Weymouth Fore River, Weymouth, MA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard hereby establishes Gull Point (PT) Special Anchorage area in the Weymouth Fore River, Weymouth, Massachusetts. This action is necessary to facilitate safe navigation and provide a safe and secure anchorage for vessels of not more than 65 feet in length. This action is intended to increase the safety of life and property in the Weymouth Fore River, improve the safety of anchored vessels, and provide for the overall safe and efficient flow of vessel traffic and commerce.

DATES: This rule is effective August 7, 2008.

ADDRESSES: Comments and materials received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (USCG–2007–0199), and are available for inspection or copying at room 628, First Coast Guard District Boston, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. John J. Mauro, Commander (dpw), First Coast Guard District, 408 Atlantic Ave., Boston, MA 02110, Telephone (617) 223–8355, e-mail: *John.J.Mauro@uscg.mil*.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On February 14, 2008, we published a notice of proposed rulemaking (NPRM) entitled ''Anchorage Regulations; Weymouth, Massachusetts, Weymouth Fore River'' in the **Federal Register** (73 FR 8635). We received no letters commenting on the proposed rule. No public hearing was requested, and none was held.

Background and Purpose

The rule is intended to reduce the risk of vessel collisions by decreasing activity in nearby over-crowded mooring areas or anchorages in Weymouth, Massachusetts. The Coast Guard is designating the special anchorage area in accordance with 33 U.S.C. 471. Under that statute, vessels will not be required to sound signals or exhibit anchor lights or shapes which are otherwise required by rule 30 and 35 of the Inland Navigation Rules, codified at 33 U.S.C. 2030 and 2035.

The Coast Guard has defined the anchorage area contained herein with the advice and consent of the Army Corps of Engineers, Northeast, located at 696 Virginia Rd., Concord, MA 01742.

Regulatory Analyses

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

Regulatory Planning and Review

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

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary.

This finding is based on the fact that this rule conforms to the changing needs of the Town of Weymouth, the changing needs of recreational, fishing and commercial vessels, and makes the best use of the available navigable water. This rule is in the interest of safe navigation, protection of moored vessels, protection of the Town of Weymouth and the marine environment.

Small Entities

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

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

Assistance for Small Entities

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

If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance; please contact John J. Mauro, at the address listed in **ADDRESSES** above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to

minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph 34(f), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A final ''Categorical Exclusion Determination'' and a final ''Environmental Analysis Check List'' are available in the docket for inspection or copying where indicated under **ADDRESSES**. This rule fits the category selected from paragraph (34)(f) as it would establish one special anchorage area

List of Subjects in 33 CFR Part 110

Anchorage grounds.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 110 as follows:

PART 110—ANCHORAGE REGULATIONS

■ 1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471; 1221 through 1236, 2030, 2035 and 2071; and Department of Homeland Security Delegation No. 0170.1.

■ 2. Amend § 110.30, by redesignating paragraph (k) as paragraph (k)(1) and adding paragraph (k)(2) to read as follows:

§ 110.30 Boston Harbor, Mass., and adjacent waters.

* * * * *

(k) * * *

(2) *Weymouth Fore River, in the vicinity of Gull Point (PT).* All of the waters bound by the following points beginning at latitude 42°15′05″ N, longitude 70°57′26″ W; thence to latitude 42°15′00″ N, longitude 70°57′26″ W; thence to latitude 42°15′15″ N, longitude 70°56′50″ W; thence to latitude 42°15′18″ N, longitude 70°56′50″ W; thence to the point of the beginning. DATUM: NAD 83.

Note to paragraph (k)(2): The area is principally for use by recreational craft. All anchoring in the area shall be under the supervision of the local harbor master or such other authority as may be designated by the authorities of the Town of Weymouth, Massachusetts. All moorings are to be so placed that no moored vessel will extend beyond the limit of the anchorage area.

* * * * *

Dated: June 23, 2008.

Timothy S. Sullivan,

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

[FR Doc. E8–15312 Filed 7–7–08; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R05–OAR–2008–0952; FRL–8688–1]

Direct Final Approval of Revised Municipal Waste Combustor State Plan for Designated Facilities and Pollutants: Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to Indiana's State Plan to control air pollutants from large Municipal Waste Combustors (MWC). The Indiana Department of Environmental Management (IDEM) submitted the State Plan on August 24, 2007. The revisions are consistent with Emission Guideline (EG) amendments promulgated by EPA on May 10, 2006. This approval means that EPA finds that the State Plan amendments meet applicable Clean Air Act (Act) requirements for large MWCs for which construction commenced on or before September 20, 1994. Once effective, this approval also makes the amended State Plan Federally enforceable.

DATES: This direct final rule will be effective September 8, 2008, unless EPA receives adverse comments by August 7, 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 No. EPA–R05–OAR–2008–0952, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: nash.carlton@epa.gov.*
3. *Fax:* (312) 886–6030.
4. *Mail:* Carlton T. Nash, Chief, Integrated Air Toxics Section, Air Toxics and Assessment Branch (AT–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* Carlton T. Nash, Chief, Integrated Air Toxics Section, Air Toxics and Assessment Branch (AT–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday,

8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2008–0952. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *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 legal holidays. We recommend that you telephone Margaret Sieffert, Environmental Engineer, at (312) 353–1151 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Margaret Sieffert, Environmental Engineer, Environmental Protection Agency, Region 5, 77 West Jackson Boulevard (AT–18J), Chicago, Illinois 60604, (312) 353–1151, *sieffert.margaret@epa.gov* or Michele Palmer, Environmental Engineer, Environmental Protection Agency, Region 5, 77 West Jackson Boulevard (ML–10C), Chicago, Illinois 60604, (312) 353–3646, *palmer.michele@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 Did Indiana Submit to EPA?
II. What Are the Revised MWC State Plan Requirements?
III. What Is the Revised Indiana MWC Plan?
IV. Does the Revised MWC State Plan Meet Federal Requirements?
V. What Action Is EPA Taking?
VI. Statutory and Executive Order Reviews

I. What Did Indiana Submit to EPA?

On August 24, 2007, Indiana submitted amendments to its State Plan to meet Federal rules applicable to large MWCs, which EPA implements under sections 111(d) and 129 of the Clean Air Act. Section 129(a)(5) of the Clean Air Act requires that EPA conduct a five-year review of the emissions guidelines and, if appropriate, revise them. These amendments are intended to revise the State plan approved by EPA on November 18, 1999 (64 FR 62928). If this approval becomes effective, it will make the amended Indiana MWC rule consistent with the amended Federal EG amendments promulgated on May 10, 2006.

There is currently one large MWC plant in Indiana covered by the revised rule, Covanta Indianapolis, Inc. This facility has three subject units.

II. What Are the Revised MWC State Plan Requirements?

On May 10, 2006 (71 FR 27324), EPA published a final rule amending the emissions guidelines at 40 CFR part 60, Subpart Cb, to reflect the actual performance levels being achieved by existing MWC units. This rulemaking included revised limits for dioxin/furan (only for units equipped with electrostatic precipitators), mercury, cadmium, lead, particulate matter, and nitrogen oxides (for some types of units). It also contained revisions to the compliance testing provisions to require increased data availability from continuous emissions monitoring systems (CEMS). CEMS are required to generate at least ninety-five percent (95%) data availability on a calendar year basis and at least ninety percent (90%) data availability on a calendar quarter basis. The compliance testing provisions have also been revised to allow the optional use of CEMS to monitor particulate matter and mercury. Other revisions include:

- Operator stand-in provisions to clarify how long a shift supervisor is allowed to be off site when a provisionally certified control room operator is standing in;
- An eight-hour block average for measuring activated carbon injection rate;
- A provision for waiver of operating parameter limits during the mercury performance test and for two weeks preceding the test, as is already allowed for dioxin testing;
- A revision to relative accuracy criterion for sulfur dioxide and carbon monoxide CEMS;
- Flexibility to the annual compliance testing schedule so that a facility tests once per calendar year, but no less than nine months and no more than 15 months since the previous test;
- Allowing use of parametric monitoring limits from an exceptionally well-operated MWC unit to be applied to all identical units at the same plant site without retesting for dioxin;
- The option of monitoring the activated carbon injection pressure or equivalent parameter; and
- Clarifying the exclusion of monitoring data from compliance calculations.

III. What Is the Revised Indiana MWC Plan?

Indiana adopted the revised State Plan to implement the EG revisions published by the EPA on May 10, 2006, in accordance with procedures established in 40 CFR part 60, subpart Cb. The submission only addresses those portions of the State Plan that have been updated since EPA's November 18, 1999, approval of Indiana's previous MWC rules. It is comprised of revisions to 326 IAC 11–7, which establishes emission standards for existing MWC units consistent with the Federal rules. These became effective in Indiana on August 9, 2007.

The remainder of the changes are accomplished by Indiana having incorporated by reference the May 10, 2006 Federal requirements. This became Federally effective when EPA approved the State's most recent updates to the Code of Federal Regulations under 326 IAC 1–1–3 (the definition of ''References to Code of Federal Regulations''). See 73 FR 14389 (March 18, 2008). In addition, Indiana made the emission limits in 326 IAC 11–7 apply upon the effective date of the rule, August 9, 2007, which is two years earlier than required by the EPA's MWC revisions.

The Revised Plan adopts the same emission limits that are in the Federal emission guidelines. Accordingly, the emission limits for particulate matter (PM), cadmium, lead, and mercury are as follows:

Pollutant	Emission limits
Particulate matter	25 milligrams per dry standard cubic meter (mg/dscm).[1, 4]
Opacity	10% based on a 6-minute average.
Cadmium	0.035 mg/dscm.[1]
Lead	0.400 mg/dscm.[1]
Mercury	0.050 mg/dscm; or 15% of the potential mercury emissions concentration.[3, 4]
Sulfur dioxide	29 parts per million by volume (ppmv); or 20% of the potential sulfur dioxide emission concentration.[3, 5]
Hydrogen chloride	29 ppmv; or 5% of the potential hydrogen chloride emissions concentration.[2, 3]
Organic emission (expressed as total mass dioxins/furans)	30 nanograms per dry standard cubic meter (ng/dscm) total mass.[1]
Nitrogen oxides	205 ppmv.[2]
Carbon monoxide[5]	100 ppmv[5] (based on a 4-hour block averaging time).

[1] Corrected to seven percent (7%) oxygen.
[2] Corrected to seven percent (7%) oxygen, dry basis.
[3] Whichever concentration is less stringent.
[4] Corrected to seven percent (7%) oxygen, dry basis, calculated as a 24-hour daily geometric mean.
[5] Measured at the combustor outlet in conjunction with a measurement of oxygen concentration, corrected to seven percent (7%) oxygen, dry basis, calculated as an arithmetic mean.

IV. Does the Revised MWC State Plan Meet Federal Requirements?

IDEM held public hearings for the preliminary adoption of the State rule on December 6, 2006, and for final adoption on February 7, 2007. The State did not receive any comments during the public comment period or at the first and second public hearings.

For the reasons discussed above, EPA has determined that the revised Plan meets all applicable Federal requirements.

V. What Action Is EPA Taking?

We are approving, through direct final rulemaking action, Indiana's revised State Plan for large MWCs, submitted to EPA on August 24, 2007. This plan revision approval excludes certain authorities retained by EPA, as stated in 40 CFR 60.30b(b) and 60.50b(n).

We are publishing this action without prior proposal because we view this as a non-controversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective September 8, 2008 without further notice unless we receive relevant adverse written comments by August 7, 2008. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If we do not receive any comments, this action will be effective September 8, 2008.

VI. 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 That Significantly Affect Energy Supply, Distribution, or Use

Because it is not a ''significant regulatory action'' under Executive Order 12866 or a ''significant energy 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 (59 FR 22951, 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 approves a state rule implementing a Federal Standard.

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 September 8, 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 62

Environmental protection, Air pollution control, Administrative practice and procedure, Intergovernmental relations, Municipal waste combustors, Reporting and recordkeeping requirements.

Dated: June 24, 2008.

Richard C. Karl,

Acting Regional Administrator, Region 5.

■ 40 CFR part 62 is amended as follows:

PART 62—[AMENDED]

■ 1. The authority citation for part 62 continues to read as follows:

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

Subpart P—Indiana

■ 2. Sections 62.3650, 62.3651, and 62.3652 to subpart P are revised to read as follows:

* * * * *

§ 62.3650 Identification of plan.

(a) On September 30, 1999, Indiana submitted the State Plan for implementing the Federal Large Municipal Waste Combustor (MWC) Emission Guidelines to control emissions from existing MWCs with the capacity to combust greater than 250 tons per day of municipal solid waste. The enforceable mechanism for this plan is a State rule codified in 326 Indiana Administrative Code (IAC) 11–7. The rule was adopted on September 2, 1998, filed with the Secretary of State on January 18, 1999, and became effective on February 17, 1999. The rule was published in the Indiana State Register on March 1, 1999 (22 IR 1967).

(b) On August 24, 2007, Indiana submitted a revised State plan as required by sections 129(a)(5) and 129 (b)(2) of the Act. The revised (Phase II) State plan implements amendments to 40 CFR part 60, subpart Cb published in the **Federal Register** on May 10, 2006. The Phase II State plan includes an amendment to State Rule 326 IAC 11–7, that was adopted by Indiana on February 7, 2007.

§ 62.3651 Identification of sources.

The plan applies to all existing municipal waste combustors with the capacity to combust greater than 250 tons per day of municipal solid waste, and for which construction, reconstruction, or modification was commenced on or before September 20, 1994, as consistent with 40 CFR part 60, subpart Cb. Subject facilities include the Indianapolis Resource Recovery Facility in Indianapolis, Indiana.

§ 62.3652 Effective date.

The effective date of Phase I of the approval of the Indiana State Plan for municipal waste combustors with the capacity to combust greater than 250 tons per day of municipal solid waste was January 18, 2000.

Phase II of the plan revision is effective September 8, 2008.

* * * * *

[FR Doc. E8–15349 Filed 7–7–08; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 03–123; FCC 08–138]

Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission clarifies its restrictions on the use of consumer or call database information by telecommunications relay service (TRS) providers to contact consumers of interstate TRS. The Commission concludes that TRS providers may use information derived from a consumer or call database to contact TRS users for purposes related to the handling of relay calls, as well as to comply with a federal statute, Commission rule or order, a court order, or other lawful authority.

DATES: Effective May 28, 2008.

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

FOR FURTHER INFORMATION CONTACT: Lisa Boehley, Consumer and Governmental Affairs Bureau, Consumer Policy Division at (202) 418–7395 (voice), or e-mail at *lisa.boehley@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Declaratory Ruling (*Consumer Contacts Declaratory Ruling*), FCC 08–138, adopted and released May 28, 2008, in CG Docket No. 03–123. FCC 08–138 addresses issues arising from the Commission's *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and

Declaratory Ruling (*2007 TRS Cost Recovery Declaratory Ruling*), CG Docket No. 03–123, FCC 07–186, published at 73 FR 3197, January 17, 2008. The full text of FCC 08–138 will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. FCC 08–138 also may be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554. Customers may contact the Commission's duplicating contractor at its Web site *http://www.bcpiweb.com* or by calling 1–800–378–3160. To request a copy of FCC 08–138 in an accessible format for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). FCC 08–138 can also be downloaded in Word or Portable Document Format (PDF) at: *http://www.fcc.gov/cgb/dro/trs.html*.

Paperwork Reduction Act of 1995 Analysis

FCC 08–138 does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, it does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 106–198, *see* 44 U.S.C. 3506(c)(4).

Synopsis

Background

1. In the *2007 TRS Cost Recovery Declaratory Ruling*, the Commission reiterated that providers seeking compensation from the Interstate TRS Fund ''may not offer consumers financial or other tangible incentives, either directly or indirectly, to make relay calls.'' *2007 TRS Cost Recovery Declaratory Ruling* at paragraph 92. The Commission also specified in greater detail the nature and types of incentive programs that are impermissible, clarified that ''a financial incentive program is not permissible even in circumstances where the benefit goes to a third party,'' and stated that providers cannot condition the ongoing use or possession of TRS equipment (or the receipt of upgraded equipment) on a consumer's call volume. *2007 TRS Cost Recovery Declaratory Ruling* at paragraphs 92 to 94. In addition, the *2007 TRS Cost Recovery Declaratory Ruling* addressed in greater detail providers' use of consumer or call databases to contact consumers for lobbying or to attempt to influence their use of relay. *2007 TRS Cost Recovery Declaratory Ruling* at paragraphs 95 and 96. In particular, it prohibited providers from using a consumer or call database to contact TRS users ''for lobbying or any other purpose,'' and prohibited providers from using a consumer or call database to ''contact TRS users or to in any way attempt to affect or influence, directly or indirectly, their use of relay service.'' *2007 TRS Cost Recovery Declaratory Ruling* at paragraphs 95 and 96.

2. Following release of the *2007 TRS Cost Recovery Declaratory Ruling*, several TRS providers, in filings with the Commission, asserted that the restrictions contained in paragraphs 95 and 96 of that ruling violate the First Amendment rights of TRS providers. In January 2008, Sorenson Communications, Inc. (Sorenson), filed a Petition for Review with the United States Court of Appeals for the Tenth Circuit seeking judicial review of this language, and sought a stay from the Commission pending resolution of its Petition for Review. *Sorenson Communications* v. *FCC*, Petition for Review, Nos. 08–9503 and 08–9507 (10th Circuit January 16, 2008 (08–9503) and January 23, 2008 (08–9507)); Sorenson Communications, Inc., *Request for Stay Pending Judicial Review*, CG Docket No. 03–123 (January 28, 2008) (*Stay Request*). Among other things, Sorenson contended that the restrictions contained in paragraphs 95 and 96 are unconstitutionally vague, violate the First Amendment rights of TRS providers, and are procedurally deficient under the Administrative Procedure Act.

3. In order to give the Commission sufficient time to consider the arguments presented by Sorenson and others, the Commission's Consumer and Governmental Affairs Bureau (CGB) issued an order on February 7, 2008, granting a 90-day stay of paragraphs 95 and 96. *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Request for Stay Pending Judicial Review*, CG Docket No. 03–123, Order, 23 FCC Rcd 1705 (CGB Feb. 7, 2008), published at 73 FR 21843, April 23, 2008. The stay granted by that order was subsequently extended until May 28, 2008. *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Request for Stay Pending Judicial Review*, CG Docket No. 03–123, Order, DA 08–1079 (CGB May 6, 2008).

Discussion

4. In FCC 08–138, the Commission states that reasonable restrictions on the use of consumer information are necessary to prevent improper marketing practices and to ensure that interstate TRS funds are used for their intended purpose. However, to address concerns that the restrictions set forth in paragraphs 95 and 96 of the *2007 TRS Cost Recovery Declaratory Ruling* may be overly broad and may have the unintended effect of preventing TRS providers from communicating important information, including critical public safety information, to TRS users relating to the handling of relay calls, the Commission clarifies the restrictions in those paragraphs. The Commission also provides examples of the circumstances in which providers may use consumer or call databases to contact relay users.

5. First, the Commission clarifies that the language in paragraphs 95 and 96 restricting the use of consumer information ''for any * * * purpose,'' does not prohibit contacts by TRS providers with TRS users that are directly related to the handling of TRS calls. Consistent with the Commission's TRS rules and orders, providers may use information derived from a consumer or call database established in conjunction with Section 225 of the Communications Act of 1934, as amended, 47 U.S.C. 225, to contact users as long as it is for purposes *related to the handling of relay calls*. Therefore, for example, a provider reasonably could directly contact relay users (using such customer information) in order to inform users of a service outage, respond to a consumer's call for emergency services, assist in the delivery of emergency services, and provide technical support for TRS products or services used by the consumer. Providers also may use customer data, for example, to comply with a federal statute, a Commission rule or order, a court order, or other lawful authority. The Commission emphasizes that any such direct contacts with relay users must be informational in nature and must relate to the provision of, or the consumer's use of, TRS.

6. On the other hand, providers may not contact consumers and offer financial or other incentives to generate additional or longer calls that can be billed to the Fund because such contacts are not directly related to the purpose of handling relay calls. The Commission may revisit these determinations if

specific facts are brought to its attention suggesting an abuse of this proviso.

7. The Commission declines to address the request that it explicitly allow the disclosure of user-specific information to third parties designated by the user and information to protect TRS users from fraudulent, abusive or unlawful use of TRS. The Commission believes this issue would be better addressed in the context of its consideration of whether, and if so, how to extend customer proprietary network information (CPNI) requirements to TRS providers. *See Telecommunications Relay Services And Speech-To-Speech Services For Individuals With Hearing And Speech Disabilities, E911 Requirements For IP-Enabled Service Providers*, CG 03–123, WC 05–196, Report and Order, 23 FCC Rcd 5255 (Mar. 19, 2008) (*Interim Emergency Call Handling Order*), published at 73 FR 21252, April 21, 2008; *Consumer and Governmental Affairs Bureau Seeks to Refresh Record on Assigning Internet Protocol (IP)-Based Telecommunications Relay Service (TRS) Users Ten-Digit Telephone Numbers Linked to North American Numbering Plan (NANP) and Related Issues*, CG Docket No. 03–123, Public Notice, 23 FCC Rcd 4727 (Mar. 19, 2008) (*IP-Based Relay Numbering PN*), published at 73 FR 16304, March 27, 2008, (seeking to refresh the record on the proposed establishment of a global database of proxy telephone numbers for Internet-based TRS users and on consumer protection issues related to numbering, including the application of CPNI requirements). Although consumer advocates have asked the Commission to ensure that consumers be asked by providers to opt-in to receiving marketing and promotional materials before receiving such information directly from providers, the Commission defers this issue for consideration in the context of whether, and if so, how to extend CPNI requirements to TRS providers. *See Interim Emergency Call Handling Order; IP-Based Relay Numbering PN*.

8. Second, the Commission clarifies that providers may not use customer information obtained through the provision of federally-funded relay services, or use funds obtained from the Interstate TRS Fund, to engage in lobbying or advocacy activities directed at relay users. Evidence in the record shows that at least one service provider has bombarded deaf persons with material seeking to persuade them to support the provider's position on matters pending before the FCC. *See, e.g., Ex parte* letter from Jon Ziev, consumer, to Kevin Martin, FCC (dated Feb. 4, 2008) (complaining that deaf persons are being subjected to a ''virtual bombardment of lobbying material''). The Commission finds that using revenue from the Interstate TRS Fund, or information obtained from end users in the provision of services supported by the Interstate TRS Fund, to engage in that kind of advocacy is inconsistent with the purpose of the fund.

9. The Commission finds that these restrictions do not run afoul of the First Amendment. In the context of a federally subsidized program, like the Interstate TRS Fund, the government ''may certainly insist that these 'public funds be spent for the purposes for which they were authorized.' '' *United States* v. *American Library Ass'n*, 539 U.S. 194, 212 (2003) (quoting *Rust* v. *Sullivan*, 500 U.S. 173, 196 (1991)). The Interstate TRS Fund is designed to ensure that persons with hearing and speech disabilities have access to the telephone system. It was not intended to finance lobbying by TRS providers directed at end users. The Commission is under no obligation ''to fund such activities out of the public fisc.'' *Rust*, 500 U.S. at 198. For the same reasons, it is reasonable to restrict the use of customer information acquired in the provision of federally subsidized TRS services. A consumer or call database that a service provider develops and maintains through participation in the TRS program is inextricably tied to that federally funded program. Consequently, it is permissible to prohibit the use of that database for purposes unrelated to the handling of relay calls, such as lobbying end users to support a service provider's position before the Commission.

10. Nothing the Commission does in this document would prevent a provider from using information and funds from other sources to engage in lawful lobbying or advocacy activities. Thus, this is not an ''unconstitutional conditions'' case in which the government ''effectively prohibit[ed] the recipient from engaging in the protected conduct outside the scope of the federally funded program.'' *Rust*, 500 U.S. at 197; *see also Regan* v. *Taxation With Representation of Washington*, 461 U.S. 540, 544–46 (1983) (holding that tax exemption for non-profit groups that do not engage in lobbying did not violate First Amendment; and noting that a group could qualify for the tax exemption by adopting a ''dual structure,'' with one arm for non-lobbying activities and another for lobbying); *DKT Int'l, Inc.* v. *United States Agency for Int'l Development*, 477 F.3d 758 (D.C. Cir. 2007) (rejecting First Amendment challenge to requirement that recipients of funds from AIDS/HIV education program adopt policy of opposition to prostitution and sexual trafficking, and noting that recipients could remain neutral by setting up a subsidiary that would receive the funds and adopt the policy). TRS providers are free to use those resources outside the scope of the TRS program to support their positions before the Commission.

11. Finally, the Commission reiterates that a relay provider may not use TRS consumer or call data, or similar, privately obtained information, to contact a relay user in an attempt to increase, directly or indirectly, the number or length of relay calls the user otherwise may choose to make via that provider. In this instance, because the practice itself (*i.e.*, offering users financial or similar incentives to generate additional or longer calls that can be billed to the Fund) is prohibited by the Commission, communications with relay users in furtherance of this practice are likewise prohibited, no matter the source of the consumer or call data. Because the obligation placed on relay providers is to be available to handle calls consumers choose to make, when they choose to make them, *i.e.*, to be the ''dial tone'' for a consumer that uses relay to call a voice telephone user, and because consumers do not pay for this service but rather providers are compensated pursuant to Title IV of the Americans with Disabilities Act, the Commission finds that these restrictions are necessary to prevent providers from improperly urging consumers to make unnecessary relay calls, and therefore to ensuring that interstate TRS funds are used for their intended purpose. By highlighting examples of both permissible and prohibited uses of consumer or call database information above, the Commission seeks to ensure that Interstate TRS funds are not used for activities that are outside the scope of, or incompatible with the purposes of, the Interstate TRS Fund, as defined by Congress.

12. The restrictions on provider-consumer contacts, as clarified in this document, apply to relay providers in connection with their offering of interstate relay services, including all Internet-based relay calls and any other relay calls that are compensated by the Interstate TRS Fund. As noted above, however, if, in the future, evidence comes to the Commission's attention of the misuse of consumer or call database information by traditional TRS providers, in connection with their offering of intrastate relay services, the Commission may revisit this issue and

consider the adoption of additional restrictions at that time.

Congressional Review Act

The Commission will not send a copy of FCC 08–138 pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A) because the adopted rules are rules of particular applicability.

Ordering Clauses

Pursuant to sections 1, 2, and 225 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, and 225, FCC 08–138 is adopted and became effective on May 28, 2008.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. E8–15446 Filed 7–7–08; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 071106671–8010–02]

RIN 0648–XI92

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch for Catcher Processors Participating in the Rockfish Limited Access Fishery in the Central Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch by catcher processors participating in the rockfish limited access fishery in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2008 total allowable catch (TAC) of Pacific ocean perch allocated to catcher processors participating in the rockfish limited access fishery in the Central Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 5, 2008, through 2400 hrs, A.l.t., December 31, 2008.

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2008 TAC of Pacific ocean perch allocated to catcher processors participating in the rockfish limited access fishery in the Central GOA is 1,386 metric tons (mt) as established by the 2008 and 2009 harvest specifications for groundfish of the GOA (73 FR 10562, February 27, 2008), and as posted as the 2008 Rockfish Program Allocations at *http://www.fakr.noaa.gov/sustainablefisheries/goarat/default.htm*.

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2008 TAC of Pacific ocean perch allocated to catcher processors participating in the rockfish limited access fishery in the Central GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 1,386 mt, and is setting aside the remaining 0 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch by catcher processors participating in the rockfish limited access fishery in the Central GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific ocean perch by catcher processors participating in the rockfish limited access fishery in the Central GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of July 1, 2008.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: July 2, 2008.

Emily H. Menashes,

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

[FR Doc. 08–1418 Filed 7–2–08; 2:41 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 071106671–8010–02]

RIN 0648–XI90

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Western Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2008 total allowable catch (TAC) of Pacific ocean perch in the Western Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 4, 2008, through 2400 hrs, A.l.t., December 31, 2008.

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2008 TAC of Pacific ocean perch in the Western Regulatory Area of the GOA is 3,686 metric tons (mt) as established by the 2008 and 2009 harvest specifications for groundfish of the GOA (73 FR 10562, February 27, 2008).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2008 TAC of Pacific ocean perch in the Western Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 3,561 mt, and is setting aside the remaining 125 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the Western Regulatory Area of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific ocean perch in the Western Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of July 1, 2008.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: July 1, 2008.

Emily H. Menashes,

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

[FR Doc. 08–1419 Filed 7–2–08; 2:41 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 73, No. 131
Tuesday, July 8, 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–2008–0749; Directorate Identifier 2008–CE–044–AD]

RIN 2120–AA64

Airworthiness Directives; Air Tractor, Inc., Models AT–402, AT–402A, and AT–402B 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 Air Tractor, Inc., (Air Tractor) Models AT–402, AT–402A, and AT–402B airplanes. This proposed AD would require you to repetitively visually inspect the rudder and vertical fin hinge attaching structure for loose fasteners and inspect the rudder or vertical fin skins, spars, hinges or brackets for cracks and/or corrosion. The AD would also require you to replace any damaged parts found as a result of the inspections and install an external doubler at the upper rudder hinge. Installation of the external doubler at the upper rudder hinge is terminating action for the repetitive inspection requirements. This proposed AD results from a report of a Model AT–402 airplane with a loose upper rudder hinge caused by fatigue. We are proposing this AD to detect and correct loose fasteners; any cracks in the rudder or vertical fin skins, spars, hinges or brackets; or corrosion of the rudder and vertical fin hinge attaching structure. Hinge failure adversely affects ability to control yaw and has led to the rudder folding over in flight. This condition could allow the rudder to contact the elevator and affect ability to control pitch with consequent loss of control.

DATES: We must receive comments on this proposed AD by September 8, 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 Air Tractor, Inc., P.O. Box 485, Olney, Texas 76374; telephone: (940) 564–5616; facsimile: (940) 564–5612.

FOR FURTHER INFORMATION CONTACT: Andrew McAnaul, Aerospace Engineer, ASW–150 (c/o MIDO–43), 10100 Reunion Place, Suite 650, San Antonio, Texas 78216; telephone: (210) 308–3365; facsimile: (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–2008–0749; Directorate Identifier 2008–CE–044–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

We received two reports (one Air Tractor Model AT–602 airplane and one Model AT–802A airplane) of in-flight rudder separation at the upper attach hinge area and other reports of Models AT–502B, AT–602, and AT–802/802A airplanes with loose hinges, skin cracks, or signs of repairs to the affected area.

Hinge failure adversely affects ability to control yaw and has led to the rudder folding over in flight. This condition could allow the rudder to contact the elevator and affect ability to control pitch with consequent loss of control.

Consequently, we issued AD 2006–23–14 (71 FR 66661, November 16, 2006). AD 2006–23–14 requires you to repetitively visually inspect the rudder and vertical fin hinge attaching structure (vertical fin skins, spars, hinges, and brackets) for loose fasteners, cracks, and/or corrosion. This AD also requires you to replace any damaged parts found as a result of the inspection and install an external doubler at the upper rudder hinge.

Since issuing AD 2006–23–14, we have received a report of a Model AT–402 airplane with a loose upper rudder hinge caused by fatigue. Therefore, we are proposing this AD to address the unsafe condition on the Model AT–402 airplanes.

Relevant Service Information

We have reviewed Snow Engineering Co. Service Letter #247, revised June 2, 2008; and Snow Engineering Co. Process Specification Number 145, dated December 6, 1991. The service information describes procedures for:

- Inspecting (visually) the rudder and fin hinge attaching structure for loose fasteners, any cracks in the rudder or vertical fin skins, spars, hinges or brackets, or corrosion;
- Replacing any damaged parts found as a result of the inspection;
- Installing an external doubler at the upper rudder hinge; and
- Balancing of the rudder.

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 you to repetitively visually inspect the rudder and vertical fin hinge attaching structure for loose fasteners, any cracks in the rudder or vertical fin skins, spars, hinges or brackets, or corrosion. This proposed AD would also require you to replace any damaged parts found as a result of the inspection

and install an external doubler at the upper rudder hinge. Installation of the external doubler at the upper rudder hinge is terminating action for the repetitive inspection requirements.

Costs of Compliance

We estimate that this proposed AD would affect 220 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
1 work-hour × $80 per hour = $80	Not applicable	$80	$17,600

Any required repairs will vary depending upon the damage found, and any replacements required will vary based on the results of the inspection. Based on this, we have no way of determining the potential repair and/or replacement costs for each airplane or the number of airplanes that will need the repairs and/or replacements based on the result of the inspections.

We estimate the following costs to do the proposed installation of the external doubler at the upper rudder hinge:

Labor cost	Parts cost	Total cost per airplane
5 work-hours × $80 per hour = $400	$217	$617

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:

Air Tractor, Inc.: Docket No. FAA–2008–0749; Directorate Identifier 2008–CE–044–AD.

Comments Due Date

(a) We must receive comments on this airworthiness directive (AD) action by September 8, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Models AT–402, AT–402A, and AT–402B airplanes, serial numbers 0694 through 1176, that are certificated in any category.

Unsafe Condition

(d) This AD results from a report of a Model AT–402 airplane with a loose upper rudder hinge caused by fatigue. We are issuing this AD to detect and correct loose fasteners; any cracks in the rudder or vertical fin skins, spars, hinges or brackets; or corrosion of the rudder and vertical fin hinge attaching structure. Hinge failure adversely affects ability to control yaw and has led to the rudder folding over in flight. This condition could allow the rudder to contact the elevator and affect ability to control pitch with consequent loss of control.

Compliance

(e) To address this problem, you must do the following, unless already done:

Actions	Compliance	Procedures
(1) Inspect visually the rudder and vertical fin hinge attachment for loose fasteners; and inspect the rudder or vertical fin skins, spars, hinges or brackets for cracks and/or corrosion.	Initially inspect when the airplane reaches a total of 3,500 hours time-in-service (TIS) or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, unless already done. Thereafter, repetitively inspect at intervals not to exceed every 100 hours TIS. Installation of the external doubler at the upper rudder hinge required by paragraph (e)(2)(ii) or (e)(3) of this AD is terminating action for the repetitive inspections required by this AD.	Follow Snow Engineering Co. Service Letter #247, revised June 2, 2008.
(2) If you find any damage as a result of any inspection required by paragraph (e)(1) of this AD, you must: (i) Replace any damaged parts with new parts and (ii) Do the installation of the external doubler at the upper rudder hinge.	Before further flight after any inspection required by paragraph (e)(1) of this AD where you find any damaged parts. The installation of the external doubler at the upper rudder hinge required by paragraph (e)(2)(ii) or (e)(3) of this AD terminates the action for the repetitive inspections required by this AD.	Follow Snow Engineering Co. Service Letter #247, revised June 2, 2008; and Snow Engineering Co. Process Specification Number 145, dated December 6, 1991.
(3) Do the installation of the external doubler at the upper rudder hinge.	When the airplane reaches a total of 5,000 hours TIS after the effective date of this AD or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, unless already done. The installation of the external doubler at the upper rudder hinge required by paragraph (e)(2)(ii) or (e)(3) of this AD terminates the action for the repetitive inspections required by this AD.	Follow Snow Engineering Co. Service Letter #247, revised June 2, 2008; and Snow Engineering Co. Process Specification Number 145, dated December 6, 1991.
(4) Do not install any rudder without the external doubler at the upper rudder hinge required by paragraph (e)(3) of this AD.	As of the effective date of this AD	Not Applicable.

Alternative Methods of Compliance (AMOCs)

(f) The Manager, Fort Worth Aircraft 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: Andrew McAnaul, Aerospace Engineer, ASW–150 (c/o MIDO–43), 10100 Reunion Place, Suite 650, San Antonio, Texas 78216; telephone: (210) 308–3365; facsimile: (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 Air Tractor, Inc., P.O. Box 485, Olney, Texas 76374; telephone: (940) 564–5616; facsimile: (940) 564–5612. 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 July 1, 2008.

John Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–15456 Filed 7–7–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0748; Directorate Identifier 2008–CE–041–AD]

RIN 2120–AA64

Airworthiness Directives; EADS SOCATA Model TBM 700 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 the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

It has been discovered that a risk of mechanical interference exists in the movement of the emergency landing gear bypass selector, due to an insufficient functional gap between a floor panel attachment lug and the landing gear control button.

This condition, if not corrected, causes mechanical interference which could result in a situation where, during emergency procedures, the landing gear cannot be extended.

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by August 7, 2008.

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through

Friday, except Federal holidays. The AD docket contains this 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: Albert Mercado, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4119; fax: (816) 329–4090.

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–2008–0748; Directorate Identifier 2008–CE–041–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 European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued Emergency AD No. 2008–0081–E, dated April 25, 2008, (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> It has been discovered that a risk of mechanical interference exists in the movement of the emergency landing gear by-pass selector, due to an insufficient functional gap between a floor panel attachment lug and the landing gear control button.
>
> This condition, if not corrected, causes mechanical interference which could result in a situation where, during emergency procedures, the landing gear cannot be extended.
>
> For the reasons described above, this EASA Emergency Airworthiness Directive (AD) requires a check of the gap between the landing gear control button and the floor panel and, if the gap is found to be insufficient, modification of the floor panel.

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

Relevant Service Information

EADS SOCATA has issued Mandatory TBM Aircraft Service Bulletin SB 70–154, dated April 2008. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all 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 Proposed AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this proposed AD will affect 72 products of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour (no labor cost; work-hour warranty given by manufacturer until May 31, 2009).

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $5,760 or $80 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this 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 this 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.

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:

EADS SOCATA: Docket No. FAA–2008–0748; Directorate Identifier 2008–CE–041–AD.

Comments Due Date

(a) We must receive comments by August 7, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to TBM 700 airplanes, serial numbers 364, 367, and 370 through 439, certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 53: Fuselage.

Reason

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

It has been discovered that a risk of mechanical interference exists in the movement of the emergency landing gear by-pass selector, due to an insufficient functional gap between a floor panel attachment lug and the landing gear control button.

This condition, if not corrected, causes mechanical interference which could result in a situation where, during emergency procedures, the landing gear cannot be extended.

For the reasons described above, this EASA Emergency Airworthiness Directive (AD) requires a check of the gap between the landing gear control button and the floor panel and, if the gap is found to be insufficient, modification of the floor panel.

Actions and Compliance

(f) For airplanes that have had the floor panel removed for maintenance or if it cannot be positively determined that the floor panel has not been removed at any time, do the following actions, unless already done:

(1) Before further flight after the effective date of this AD, inspect the gap between the landing gear control button and the floor panel. Do the inspection following paragraph A of the Accomplishment Instructions in EADS SOCATA Mandatory TBM Aircraft Service Bulletin SB 70–154, dated April 2008.

(2) If the gap is below the limits specified in paragraph A of EADS SOCATA Mandatory TBM Aircraft Service Bulletin SB 70–154, dated April 2008, before further flight after the inspection required in paragraph (f)(1) of this AD, modify the floor panel following paragraph C of the Accomplishment Instructions in EADS SOCATA Mandatory TBM Aircraft Service Bulletin SB 70–154, dated April 2008.

(g) For airplanes in which it can be positively determined that the floor panel has not been removed at any time, within the next 30 days after the effective date of this AD, modify the floor panel following paragraph C of the Accomplishment Instructions in EADS SOCATA Mandatory TBM Aircraft Service Bulletin SB 70–154, dated April 2008.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Albert Mercado, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4119; fax: (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Special Flight Permit

(i) A single ferry flight of the airplane with landing gear extended is allowed in order to reach the nearest maintenance facility where the inspection and modification is to be done.

Related Information

(j) Refer to MCAI European Aviation Safety Agency (EASA) Emergency AD No. 2008–0081–E, dated April 25, 2008; and EADS SOCATA Mandatory TBM Aircraft Service Bulletin SB 70–154, dated April 2008 for related information.

Issued in Kansas City, Missouri, on July 1, 2008.

John Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–15461 Filed 7–7–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–26598; Directorate Identifier 2006–CE–087–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S. A. (EMBRAER) Models EMB–110P1 and EMB–110P2 Airplanes

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

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of the comment period.

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

It has been found cases of corrosion at the regions of Wings-to-Fuselage attachments, Vertical Stabilizer to Fuselage attachments, Rib 1 Half-wing and Passenger Seat Tracks. Such corrosion may lead to subsequent cracking of the affected parts, compromising the aircraft structural integrity, which may in turn lead to structural failure and/or loss of some control surface.

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by September 8, 2008.

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the

Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this 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: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; fax: (816) 329–4090.

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–2006–26598; Directorate Identifier 2006–CE–087–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

We proposed to amend 14 CFR part 39 with an earlier supplemental NPRM for the specified products, which was published in the **Federal Register** on March 7, 2007 (72 FR 10093). That earlier supplemental NPRM proposed to require actions intended to address the unsafe condition for the products listed above.

Since that supplemental NPRM was issued, Empresa Brasileira de Aeronautica S. A. (EMBRAER) issued Service Bulletin S.B. No.: 110–00–0007, REVISION No.: 01, dated January 12, 2007. This revision added a concurrent requirement to do EMBRAER Service Bulletin S.B. No.: 110–57–0026, REVISION No.: 03, dated April 02, 2007.

The Agência Nacional de Aviação Civil (ANAC), which is the aviation authority for Brazil, has issued AD No.: 2006–10–01R1, dated August 30, 2007 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> It has been found cases of corrosion at the regions of Wings-to-Fuselage attachments, Vertical Stabilizer to Fuselage attachments, Rib 1 Half-wing and Passenger Seat Tracks. Such corrosion may lead to subsequent cracking of the affected parts, compromising the aircraft structural integrity, which may in turn lead to structural failure and/or loss of some control surface.
>
> Since this condition may occur in other aircraft of the same type design and affects flight safety, a corrective action is required. Thus, sufficient reason exists to request compliance with this AD in the indicated time limit.
>
> Inspection for corrosion at regions of Wings-to Fuselage attachments, Vertical Stabilizer to Fuselage attachments, Rib 1 Half-wing and Passenger Seat Tracks; and if applicable, removal of the detected corrosion.

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

Relevant Service Information

EMBRAER has issued Service Bulletin S.B. No.: 110–00–0007, REVISION No.: 01, dated January 12, 2007; and Service Bulletin S.B. No.: 110–57–0026, REVISION No.: 03, dated April 02, 2007. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

Comments

We have considered the following comments received on the earlier NPRM.

Comment Issue No. 1: Extend the Implementation Period

Business Air, Inc. and Royal Air Freight comment that the proposed AD, as written, would unnecessarily interrupt their service and bankrupt the companies due to their reliance on this airplane type. They request the implementation period of the proposed AD be extended to prevent grounding of the aircraft. Business Air, Inc. requests the time extension to develop an alternative method of compliance (AMOC).

The compliance times specified in the proposed AD could be adjusted to accommodate a reasonable time period for maintenance planning. According to 14 CFR 39.19, the FAA approves AMOCs or changes in compliance times, if we determine the proposal provides an acceptable level of safety. In this case, the FAA understands that some of the affected airplanes are being maintained under operators' approved aircraft inspection and maintenance programs. It is possible that many of the proposed AD actions can be integrated into these existing inspection and maintenance programs. Since the programs vary from operator to operator, we cannot write a compliance time to adhere to every maintenance schedule. We will consider changes in the compliance time or alternative actions presented to the FAA using the procedures in 14 CFR 39.19 and this AD.

We are not changing the proposed AD as a result of this comment.

Comment Issue No. 2: The Manufacturer Is Attempting To Ground the Aircraft

AirNow (also identified as Business Air, Inc.) states the proposed AD is an attempt by the manufacturer to ground the aircraft and relieve itself of support responsibilities. They state that these aircraft are operated in different climatic conditions and are subjected to widely varying degrees of corrosion conditions. In addition, the aircraft are operated with differing levels of oversight and surveillance by the FAA. AirNow suggests the proposed AD does not take into account these differences in operational environment. We infer that the commenter wants a differentiation of compliance times based on operational environment or wants the NPRM withdrawn.

The FAA does not agree that the NPRM should be withdrawn. We agree that airplanes are operated under varied levels of oversight and climatic conditions internationally; however, the instructions issued from the airworthiness authority of the state of design apply to all airplanes of this type design, regardless of use.

Under the aviation relationship between Brazil and the United States, Brazil monitors the continued airworthiness of aircraft it is the State of Design for and issues mandatory continuing airworthiness information (MCAI) when they determine it is necessary. FAA Order 8040.5, *Airworthiness Directive Process for Mandatory Continuing Airworthiness Information* (MCAI), directs the FAA in responding to foreign issued MCAI. Under this order, the FAA accepts and analyzes the MCAI as developed by the State of Design, in this case Brazil, which is responsible for the continued airworthiness of the EMB–110 design. After reviewing the MCAI and FAA service difficulty reports that revealed some corrosion related reports, we determined that an unsafe condition exists and the condition is likely to exist or develop in other products of the same type design registered in the United States.

We are not changing the proposed AD as a result of this comment.

Comment Issue No. 3: The Costs Are Underestimated

Royal Air Freight and AirNow comment that the proposed AD underestimates the actual cost and does not recognize the damage that will be done to surrounding structure or components when the proposed maintenance is done.

We accept the MCAI as developed by the State of Design, in this case Brazil, which is responsible for the continued airworthiness of the EMB–110 design. Therefore, we rely on ANAC to advise us on the time and materials necessary to accomplish the actions in the service information. The FAA cannot determine the impact of the proposed AD actions to surrounding structure beyond what was provided to us by ANAC. We based the cost estimates on the information supplied by ANAC, and we realize some operators may incur higher or lower costs.

On January 12, 2007, Embraer revised the service information. The revision is discussed below in Comment Issue No. 4. We have reviewed the revised information and have revised the costs accordingly.

Comment Issue No. 4: Revised Service Information

Embraer notes the service bulletin identified in the proposed AD has been revised. The revised service information is Service Bulletin S.B. No.: 110–00–0007, REVISION No.: 01, dated January 12, 2007. This service bulletin adds more requirements to address the unsafe condition, including compliance with Service Bulletin, S.B. No.: 110–57–0026, REVISION No.: 03, dated April 02, 2007. Embraer also comments that the revised service information incorporates an AMOC that ANAC issued to allow the use of repetitive inspections from Part III of the revised service bulletin in lieu of Part IV compliance. The commenter proposes new language for the NPRM that includes the new information mentioned in their comment.

We have reviewed the revised service information and agree that we should include it in the proposed AD. We have revised the proposed AD to include EMBRAER Service Bulletin S.B. No.: 110–00–0007, REVISION No.: 01, dated January 12, 2007; and EMBRAER Service Bulletin S.B. No.: 110–57–0026, REVISION No.: 03, dated April 2, 2007.

FAA's Determination and Requirements of the Proposed AD

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

We also determined from our review that some of the actions required in the service information may go beyond addressing the unsafe condition listed in the MCAI. We are changing this proposed AD to require, at this time, only the actions we determined necessary to address the unsafe condition. We will continue to evaluate the other MCAI actions and monitor the corrosion issue. We may take future AD action if we determine an additional unsafe condition exists or is likely to develop.

Certain changes described above change the scope of the earlier NPRM. As a result, we have determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on the proposed AD.

Differences Between This Proposed AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD will affect 38 products of U.S. registry. We also estimate that it would take about 95 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $288,800, or $7,600 per product.

We have no way of determining the number of products that may need any necessary follow-on actions or the cost associated with those actions.

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this 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 this 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.

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:

Empresa Brasileira de Aeronautica S. A. (EMBRAER): Docket No. FAA–2006–26598; Directorate Identifier 2006–CE–087–AD.

Comments Due Date

(a) We must receive comments by September 8, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Models EMB–110P1 and EMB–P2 airplanes, all serial numbers, certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 57: Wings.

Reason

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

It has been found cases of corrosion at the regions of Wings-to-Fuselage attachments, Vertical Stabilizer to Fuselage attachments, Rib 1 Half-wing and Passenger Seat Tracks. Such corrosion may lead to subsequent cracking of the affected parts, compromising the aircraft structural integrity, which may in turn lead to structural failure and/or loss of some control surface.

Since this condition may occur in other aircraft of the same type design and affects flight safety, a corrective action is required. Thus, sufficient reason exists to request compliance with this AD in the indicated time limit.

Inspection for corrosion at regions of Wings-to Fuselage attachments, Vertical Stabilizer to Fuselage attachments, Rib 1 Half-wing and Passenger Seat Tracks; and if applicable, removal of the detected corrosion.

Actions and Compliance

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

(1) Within the next 30 days after the effective date of this AD or within the next 100 hours time-in-service after the effective date of this AD, whichever occurs first, carry out a general visual inspection for corrosion at the regions of the wings-to-fuselage attachments, vertical stabilizer to fuselage attachments, rib 1 half-wing, and passenger seat tracks, following Parts I, II, and III of the Embraer—Empresa Brasileira de Aeronáutica S.A. (EMBRAER) Service Bulletin S.B. No.: 110–00–0007, REVISION No.: 01, dated January 12, 2007.

(i) Before further flight, all structures found corroded or cracked as a result of the inspections done above must be addressed following the detailed instructions and procedures described in EMBRAER Service Bulletin S.B. No.: 110–00–0007, REVISION No.: 01, dated January 12, 2007.

(ii) Previous accomplishment of EMBRAER Alert Service Bulletin S.B. No.: 110–00–A007, dated March 6, 2006, or the implementation of the tasks required by section VI of the Maintenance Planning Guides TP 110P2/145, PM 110/652, or PM 110/165, released by EMBRAER, are considered acceptable methods of compliance with the requirements of (f)(1) and (f)(1)(i) of this AD.

(2) Within the next 36 months after the effective date of this AD, do a visual, and as applicable, dye-penetrant inspection in rib 1 external and internal regions, in the auxiliary fittings of the main box half-wings, and in the spar webs of half-wings. Do the inspections following the paragraph 3. ACCOMPLISHMENT INSTRUCTIONS of EMBRAER Service Bulletin S.B. No.: 110–57–0026, REVISION No.: 03, dated April 2, 2007. Before further flight, all structures found corroded or cracked as a result of the inspections done above must be corrected following the detailed instructions and procedures described in EMBRAER Service Bulletin S.B. No.: 110–57–0026, REVISION No.: 03, dated April 2, 2007.

Note 1: The FAA is aware that most of the affected airplanes are maintained under operators' approved aircraft inspection and maintenance programs. The AD actions may be integrated into these existing inspection and maintenance programs. We will consider changes in the compliance time or alternative actions following the provisions of paragraph (g)(1) of this AD.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: We determined the requirement to do Part IV and Part V of EMBRAER Service Bulletin S.B. No.: 110–00–0007, REVISION No.: 01, dated January 12, 2007, may go beyond addressing the unsafe condition listed in the MCAI. We have removed those actions from this AD. We will continue to evaluate the additional MCAI actions and monitor the corrosion issue. We may take future AD action if we determine an additional unsafe condition exists or is likely to develop.

Other FAA AD Provisions

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

(1) Alternative Methods of Compliance (AMOCs): The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; fax: (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Related Information

(h) Refer to MCAI Agência Nacional de Aviação Civil (ANAC) AD No.: 2006–10–01R1, dated August 30, 2007; EMBRAER Service Bulletin S.B. No.: 110–00–0007, REVISION No.: 01, dated January 12, 2007; EMBRAER Alert Service Bulletin S.B. No.: 110–00–A007, dated March 6, 2006; EMBRAER Service Bulletin S.B. No.: 110–57–0026, REVISION No.: 03, dated April 2, 2007; and Maintenance Planning Guides TP 110P2/145, PM 110/652, and PM 110/165, released by EMBRAER; for related information.

Issued in Kansas City, Missouri, on June 30, 2008.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–15510 Filed 7–7–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–164965–04]

RIN 1545–BE77

Elections Regarding Start-Up Expenditures, Corporation Organizational Expenditures, and Partnership Organizational Expenses

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to the elections to deduct start-up expenditures under section 195 of the Internal Revenue Code (Code), organizational expenditures of corporations under section 248, and organizational expenses of partnerships under section 709. The American Jobs Creation Act of 2004 amended these three sections of the Code to provide similar rules for deducting these types of expenses that are paid or incurred after October 22, 2004. The regulations affect taxpayers that pay or incur these expenses and provide guidance on how to elect to deduct the expenses in accordance with the new rules. The text of those

temporary regulations also serves as the text of these proposed regulations.

DATES: Comments or a request for a public hearing must be received by October 6, 2008.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–164965–04), room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–164965–04), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–164965–04).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Grace Matuszeski, (202) 622–7900; concerning submission of comments or a request for a public hearing, Richard Hurst, at *Richard.A.Hurst@irscounsel.treas.gov* or (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR Part 1) to implement the changes to sections 195, 248, and 709 of the Code made by section 902 of the American Jobs Creation Act of 2004, Public Law 108–357 (118 Stat. 1418). The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

Special Analyses

This notice of proposed rulemaking 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. Because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing will be scheduled if requested in writing by any person that timely submits comments. If a public hearing is scheduled, notice of the date, time and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Grace Matuszeski of the Office of the Associate Chief Counsel (Income Tax & Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.195–1 is revised to read as follows:

§ 1.195–1 Election to amortize start-up expenditures.

[The text of this section is the same as the text of § 1.195–1T(a) through (d) published elsewhere in this issue of the **Federal Register**.]

Par. 3. Section 1.248–1 is amended by revising paragraphs (a) and (c), and adding paragraphs (d) through (f), to read as follows:

§ 1.248–1 Election to amortize organizational expenditures.

(a) [The text of this proposed amendment to § 1.248–1(a) is the same as the text of § 1.248–1T(a) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(c) through (f) [The text of these proposed amendments to § 1.248–1(c) through (f) are the same as the text of § 1.248–1T(c) through (f) published elsewhere in this issue of the **Federal Register**.]

Par. 4. Section 1.709–1 is amended by revising the section heading and paragraph (b) to read as follows:

§ 1.709–1 Treatment of organizational expenses and syndication costs.

* * * * *

(b) [The text of this proposed amendment to § 1.709–1(b) is the same as the text of § 1.709–1T(b)(1) through (b)(5) published elsewhere in this issue of the **Federal Register**.]

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E8–15457 Filed 7–7–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

[WV–113–FOR; OSM–2008–0009]

West Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We are announcing receipt of a proposed amendment to the West Virginia regulatory program (the West Virginia program) under the Federal Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). West Virginia is submitting a proposed amendment to revise its Code of State Regulations (CSR) and the West Virginia Code, as contained in Committee Substitutes for Senate Bills 373 and 751. The proposed amendment covers a variety of issues including, but not limited to, statutory changes involving the special reclamation tax, the creation of alternative programs for the purpose of paying for the reclamation of forfeited sites including water treatment where required, and incremental bonding.

Other provisions include regulatory revisions relating to public notice of permit applications, incidental boundary revisions, permit issuance findings, inspection of certain impoundments, reclamation of natural drainways subsequent to sediment pond removal, storm water runoff analysis,

contemporaneous reclamation standards regarding excess spoil fills and bonding of certain types of excess spoil fills, and effluent limits and bond releases on remining operations.

In addition, most blasting provisions have been removed from the State's Surface Mining Reclamation Regulations at Title 38 CSR 2 and will now only be found in the State's Surface Mining Blasting Rule at Title 199 CSR 1.

On June 16, 2008, OSM published in a separate **Federal Register** notice, an interim approval of the State's alternative bonding provisions at section 22–3–11 of the West Virginia Surface Coal Mining and Reclamation Act (WVSCMRA) that specifically relates to the special reclamation tax and the creation of the Special Reclamation Water Trust Fund. OSM will accept comments on all other provisions of the program amendment pursuant to this proposed rule notice.

DATES: We will accept written comments until 4 p.m., EDT August 7, 2008. If requested, we will hold a public hearing on August 4, 2008. We will accept requests to speak until 4 p.m., EDT on July 23, 2008.

ADDRESSES: You may submit comments by any of the following two methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* The proposed rule has been assigned Docket ID OSM–2008–0009. If you would like to submit comments through the Federal eRulemaking Portal, go to *http://www.regulations.gov* and do the following. Click on the ''Advanced Docket Search'' button on the right side of the screen. Type in the Docket ID OSM–2008–0009 and click the ''Submit'' button at the bottom of the page. The next screen will display the Docket Search Results for the rulemaking. If you click on OSM–2008–0009, you can view the proposed rule and submit a comment. You can also view supporting material and any comments submitted by others.
- *Mail/Hand Delivery:* Mr. Roger W. Calhoun, Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 1027 Virginia Street, East, Charleston, West Virginia 25301. Please include the rule identifier (WV–113–FOR) with your written comments.

Instructions: All submissions received must include the agency Docket ID (OSM–2008–0009) for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Comment Procedures'' in the **SUPPLEMENTARY INFORMATION** section of this document. You may also request to speak at a public hearing by contacting the individual listed under **FOR FURTHER INFORMATION CONTACT** .

Docket: The proposed rule and any comments that are submitted may be viewed over the internet at *http://www.regulations.gov.* Look for Docket ID OSM–2008–0009. In addition, you may review copies of the West Virginia program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may also receive one free copy of this amendment by contacting OSM's Charleston Field Office listed below.

Mr. Roger W. Calhoun, Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 1027 Virginia Street, East, Charleston, West Virginia 25301, Telephone: (304) 347–7158. E-mail: *chfo@osmre.gov.*

West Virginia Department of Environmental Protection, 601 57th Street, SE., Charleston, WV 25304, Telephone: (304) 926–0490.

In addition, you may review a copy of the amendment during regular business hours at the following locations:

Office of Surface Mining Reclamation and Enforcement, Morgantown Area Office, 604 Cheat Road, Suite 150, Morgantown, West Virginia 26508, Telephone: (304) 291–4004 (By Appointment Only).

Office of Surface Mining Reclamation and Enforcement, Beckley Area Office, 313 Harper Park Drive, Suite 3, Beckley, West Virginia 25801, Telephone: (304) 255–5265.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Charleston Field Office, Telephone: (304) 347–7158. E-mail: *chfo@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the West Virginia Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the West Virginia Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, ''* * * a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the West Virginia program on January 21, 1981. You can find background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and conditions of approval of the West Virginia program in the January 21, 1981, **Federal Register** (46 FR 5915). You can also find later actions concerning West Virginia's program and program amendments at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

II. Description of the Proposed Amendment

By letter dated April 8, 2008, and received electronically on April 17, 2008 (Administrative Record Number WV–1503), the West Virginia Department of Environmental Protection (WVDEP) submitted an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). The amendment consists of changes to the West Virginia Code of State Regulations (CSR) and the West Virginia Code, as contained in Committee Substitutes for Senate Bills 373 and 751.

Committee Substitute for Senate Bill 373 authorizes revisions to the State's Surface Mining Reclamation Regulations at 38 CSR 2 and its Surface Mining Blasting Regulations at 199 CSR 1. Committee Substitute for Senate Bill 373 was adopted by the Legislature on March 6, 2008, and signed into law by the Governor on March 28, 2008. West Virginia Code at paragraphs 64–3–1 (o) and (p) authorize WVDEP to promulgate the revisions to its rules as legislative rules. This amendment contains a variety of topics, including new language for technical completeness, sediment control, storm water runoff, blasting, excess spoil fills, bonding programs, water quality, seismograph records, and definitions. In addition, the amendment contains Committee Substitute for Senate Bill 751, which was adopted by the Legislature on March 8, 2008, and approved by the Governor on March 27, 2008. Committee Substitute for Senate Bill 751 amended and reenacted section 22–3–11 of the WVSCMRA. As mentioned above, OSM has approved, on an interim basis, under a separate **Federal Register** (73 FR 33884) notice a portion of the bill relating to the special reclamation tax and the Special Reclamation Water Trust Fund. Through this notice, we are requesting public comment on the remaining revisions to the State's

alternative bonding system that are authorized by Committee Substitute for Senate Bill 751.

The amendment is intended to improve the effectiveness of the West Virginia program and to render the West Virginia program no less effective than the Federal regulations. Throughout this proposed amendment, nonsubstantive changes from ''Office'' to ''Secretary'', ''Office'' to ''office'', ''Office of Explosives and Blasting'' to ''Secretary'' are made but not listed in this Proposed Rule Notice.

Pursuant to Committee Substitute for Senate Bill 373, West Virginia proposes the following amendments to its Surface Mining Reclamation Regulations at Title 38 CSR 2:

1. CSR 38–2–3.2.g Notice of Technical Completeness

Notice of technical completeness is new language that is to be added to the State's regulations. It is to provide the public an opportunity to review and comment on a permit application once technical review is completed by the State and the application has been supplemented by the applicant after the close of the public comment period.

As amended, subparagraph 3.2.g is new and reads as follows:

3.2.g. Notice of Technical Completeness. After the Secretary deems a Surface Mine Application technically complete, the Secretary shall cause the applicant to advertise that the application is technically complete. The one time notice shall state that the application has been deemed technically complete by the Secretary and include a fifteen (15) day public review period: Provided, that, Notice of Technical Completeness is not necessary if the application was technically complete prior to the end of the comment period of the original advertisement or a decision is made within ninety (90) days of the end of the comment period or informal conference.

These proposed revisions fall under the provisions of Section 513 of SMCRA and 30 CFR 773.6.

2. CSR 38–2–3.29.a Incidental Boundary Revisions (IBRs)

This amendment proposes to delete language regarding incidental boundary revisions that provides ''or where it has been demonstrated to the satisfaction of the Secretary that limited coal removal on areas immediately adjacent to the existing permit''. This proposal is in response to earlier OSM concerns about the State's incidental boundary revision requirements. See the March 2, 2006, **Federal Register** for further explanation (71 FR 10768).

As amended, subparagraph 3.29.a reads as follows:

3.29.a. Incidental Boundary Revisions (IBRs) shall be limited to minor shifts or extensions of the permit boundary into non-coal areas or areas where any coal extraction is incidental to or of only secondary consideration to the intended purpose of the IBR. IBRs shall also include the deletion of bonded acreage which is overbonded by another valid permit and for which full liability is assumed in writing by the successive permittee. Incidental Boundary Revisions shall not be granted for any prospecting operations, or to abate a violation where encroachment beyond the permit boundary is involved, unless an equal amount of acreage covered under the IBR for encroachment is deleted from the permitted area and transferred to the encroachment area.

These proposed revisions fall under the provisions of 30 CFR 774.13(d).

3. CSR 38–2–3.32.b Findings—Permit Issuance

This amendment proposes to delete the following language at subparagraph 3.32.b relating to required written findings for permit issuance:

The Secretary will systematically prioritize the data collection and data compilation effort required by this paragraph on the ownership and control of violators in the following order: bond forfeitures, outstanding unabated cessation orders, delinquent civil penalties, and delinquent reclamation fees.

To accomplish this objective, the Secretary will utilize the data in the Federal Applicant Violator System, the Environmental Resources Information Network, the Mine Safety and Health Administration R.31 Data Base, and the Energy Information Administration Data Base together with such other information as may be readily available. In addition, the Secretary will make reasonable efforts to identify and include the Mine Safety and Health Administration identification number for sites on the violation listing.

As amended, subparagraph 3.32.b reads as follows:

3.32.b. Based on the information provided by applicants for surface mining permits pursuant to subdivisions 3.1.a, 3.1.b, 3.1.c, 3.1.d, 3.1.i, 3.1.j, and 3.1.k of this rule and any other reasonably available information, the Secretary will compile and maintain an accurate and up-to-date computerized listing of all persons who own or control surface mining operations with outstanding unabated cessation orders, delinquent civil penalties, delinquent reclamation fees, and bond forfeitures of record in the state since May 3, 1978. The listing will include, to the extent reasonably possible, all owners and controllers of the violator(s), described in subdivision 3.1.c of this rule. The Secretary will make reasonable efforts to determine the owners and controllers of the permittee, the operator if different from the permittee, and the lessor or mineral owner, where a contract mining situation exists. The procedures and listings described in this subsection do not apply to notices of violations and are subject to rights of rebuttable presumption. The Secretary is not obligated to use this information to conduct a systematic review of all existing permits for the purpose of identifying and subsequently suspending those, if any, which may have been improvidently issued.

The Secretary will, using the computerized data bases, review prior to permit issuance all applications received after the effective date of this rule and make all reasonable efforts to determine at a minimum in each case whether outstanding violations (except for notices of violations), unabated cessation orders, delinquent civil penalties, and/or bond forfeitures exist on the part of the applicant, the owners or controllers of the operator, and the lessor and entities controlled by the lessor, (if the lessor retains rights to the coal after extraction) and, if so, withhold approval of the application until all violations are abated or otherwise resolved in accordance with the requirements of the Act and this rule.

Where the information in the subject data bases is incomplete and where the information is not available or has not been made available to the Secretary prior to issuance of the permit, the Secretary shall not be held in violation of any of the requirements of the Act and this rule. However, where it is later determined that permits were improvidently issued as a result of inadequate information in the subject data bases or other sources available at the time the permit is issued, the Secretary shall initiate the procedures set forth in subsection 3.34 of this section.

These proposed revisions delete unnecessary language and fall under the provisions of section 510 of SMCRA and 30 CFR 773.8 and 773.11.

4. CSR 38–2–5.4.e.1 Sediment Control: Inspections

This amendment proposes to remove the words ''Impoundments meeting'' after ''30 CFR 77.216(a).'' This revision is to delete language that OSM previously disapproved relating to impoundments. See the March 2, 2006, **Federal Register** for further explanation (71 FR 10771).

As amended, subparagraph 5.4.e.1 reads as follows:

5.4.e.1. A qualified registered professional engineer or other qualified professional specialist, under the direction of the professional engineer, shall inspect each impoundment or sediment control structure provided, that a licensed land surveyor may inspect those impoundments or sediment control or other water retention structures which do not meet the size or other criteria of 30 CFR 77.216(a); the Class B or C criteria for dams in Earth Dams and Reservoirs, TR–60 or W. Va. Code § 22–14 *et seq.*, and which are not constructed of coal processing waste or coal refuse. The professional engineer, licensed land surveyor, or specialist shall be experienced in the construction of impoundments and sediment control structures.

These proposed revisions fall under the provisions of 30 CFR 816/817.49(a)(1).

5. CSR 38–2–5.4.h.2 Abandonment Procedures

This amendment proposes to delete language and add new language regarding the construction of natural drainways subsequent to sediment pond removal. WVDEP proposes to delete the following:

''The natural drainway shall be returned as nearly as practicable to its original profile and cross section with the channel sides and bottom rock riprapped up to the top of the channels banks. The riprap requirement may be waived where the bottom and sides of the channel consist of bedrock,'' and proposes to add the following:

The natural drainway shall be returned as nearly as practicable to its original pattern, profile, and dimensions and stabilized to control erosion and be in accordance with the reclamation plan. The reclamation plan should also take into consideration channel and bank stability and habitat enhancement.

As amended, subparagraph 5.4.h.2 reads as follows:

5.4.h.2. Embankment type sediment dams, embankment type excavated sediment dams and crib and gabion dams, and all accumulated sediment behind the dam shall be removed from the natural drainway. The natural drainway shall be returned as nearly as practicable to its original pattern, profile, and dimensions and stabilized to control erosion and be in accordance with the reclamation plan. The reclamation plan should also take into consideration channel and bank stability and habitat enhancement.

These proposed revisions fall under the provisions of 30 CFR 816/817.56.

6. CSR 38–2–5.6.a Storm Water Runoff

This amendment proposes to clarify what operations may be exempt from conducting a ''Storm Water Runoff Analysis'' by adding the following language:

''Provided, however, an exemption may be considered on a case by case basis for mining operations with permitted acreage less than 50 acres. Furthermore, haulroads, loadouts, and ventilation facilities are excluded from this requirement. The storm water runoff analysis shall include''

As amended, subparagraph 5.6.a reads as follows:

5.6.a. Each application for a permit shall contain a storm water runoff analysis. Provided, however, an exemption may be considered on a case by case basis for mining operations with permitted acreage less than 50 acres. Furthermore, haulroads, loadouts, and ventilation facilities are excluded from this requirement. The storm water runoff analysis shall include the following:

These proposed revisions fall under the provisions of 30 CFR 780.21 and 784.14.

7. CSR 38–2–5.6.b Storm Water Runoff Plan

This amendment proposes to change the time period from twenty-four (24) to forty-eight (48) hours in which the monitoring results of a one (1) year, twenty-four (24) hour storm event or greater must be reported to the Secretary by the permittee.

As amended, subparagraph 5.6.b reads as follows:

5.6.b. Each application for a permit shall contain a runoff-monitoring plan which shall include, but is not limited to, the installation and maintenance of rain gauges. The plan shall be specific to local conditions. All operations must record daily precipitation and report monitoring results on a monthly basis and any one (1) year, twenty-four (24) storm event or greater must be reported to the Secretary within forty eight (48) and shall include the results of a permit wide drainage system inspection.

These proposed revisions fall under the provisions of 30 CFR 780.21 and 784.14.

8. CSR 38–2–5.6.d Phase-in Compliance Schedule

This amendment proposes to delete language regarding the phase-in compliance schedule for the submission of the storm water runoff analysis that expired in June 2006. Because the deadline for the submission of storm water runoff analysis has expired, the State is proposing to delete subparagraphs 5.6.d, d.1, d.1.a, d.1.b, d.1.c, d.1.d, and d.1.e.

There is no Federal counterpart for this proposed revision.

9. CSR 38–2–6 Blasting

This amendment proposes to remove duplication of rules for blasting at Section 6.

At Subsections 6.1 and 6.2, this amendment proposes to add, ''and be in accordance with the requirements with Surface Mining Blasting Rule, Title 199 Series 1.'' at the end of the subsections.

Subsections 6.3, 6.4, 6.5, 6.6, 6.7, and 6.8 are proposed to be deleted entirely. As amended, Subsections 6.1 and 6.2 read as follows:

6.1. General Requirements. Each operator shall comply with all applicable state and federal laws in the use of explosives. A blaster certified by the Department of Environmental Protection shall be responsible for all blasting operations including the transportation, storage and use of explosives within the permit area in accordance with the blasting plan and be in accordance with the requirements with Surface Mining Blasting Rule, Title 199 Series 1.

6.2. Blasting Plan. Each application for a permit, where blasting is anticipated, shall include a blasting plan. The blasting plan shall explain how the applicant will comply with the blasting requirements of the Act, this rule, and the terms and conditions of the permit. This plan shall include, at a minimum, information setting forth the limitations the operator will meet with regard to ground vibration and airblast, the basis for those limitations, the methods to be applied in controlling the adverse effects of blasting operations and be in accordance with the requirements with Surface Mining Blasting Rule, Title 199 Series 1.

These proposed cross references to the State's blasting rules at Title 199, Series 1 fall under the provisions of the Federal blasting regulations at 30 CFR 816/817.61–68.

10. CSR 38–2–7.4.b.1.J.1.(c) Front Faces of Valley Fills

This amendment proposes to add language that was previously removed and not approved by OSM in the March 2, 2006, **Federal Register** (71 FR 10776). This proposed revision falls under the provisions of 30 CFR 816.22(d)(1) and 816.71(e)(2).

West Virginia is proposing to reinstate the language as follows:

7.4.b.1.J.1.(c) Surface material shall be composed of soil and the materials described in subparagraph 7.4.b.1.D.

11. CSR 38–2–14.15.c.2 Reclaimed Areas: Calculation of Disturbed Areas

This amendment proposes to clarify contemporaneous reclamation rules and bonding of excess spoil disposal fills by deleting ''area is available to do so;'' and adding ''first two lifts are in and are seeded'' at the end of the subparagraph.

As amended, subparagraph 14.15.c.2 reads as follows:

14.15.c.2. Areas within the confines of excess spoil disposal fills which are under construction provided the fill is being constructed in the ''conventional'' method, *i.e.* , completed from the toe up, or those fills which are being constructed progressively in lifts from the toe up or are being progressively completed from the toe up by constructing benches and appropriate drainage control structures (ditches, flumes, channels, etc.) from the toe up as soon as the first two lifts are in and are seeded.

These proposed revisions fall under the provisions of 30 CFR 816.71 and 816.100.

12. CSR 38–2–14.15.d.3 Excess Spoil Disposal Fills: Bonding Proposed Fill Areas

This amendment proposes to clarify the contemporaneous reclamation and bonding requirements of certain excess spoil disposal fills by deleting the phrase ''to use single lift top down

construction'' and adding ''with erosion protection zones'' after the word ''designed''.

As amended, subparagraph 14.15.d.3 reads as follows:

14.15.d.3. Operations that propose fills that are designed with erosion protection zones shall bond the proposed fill areas based upon the maximum amount per acre specified in WV Code § 22–3-12(b)(1).

These proposed revisions are to further clarify the requirements pursuant to the provisions of 30 CFR 800.14 and 816.71.

13. CSR 38–2–14.15.e Applicability

This amendment proposes to remove the applicability schedule that expired in 2004. The applicability schedule regarding the implementation of contemporaneous reclamation plans at subparagraphs 14.15.e, 14.15.e.1 and 14.15.e.2 are removed completely and 14.15.e.3 is renumbered as 14.15.e.

There are no Federal counterparts to the subparagraphs that the State proposes to delete.

14. CSR 38–2–23.3 Water Quality—Coal Remining Operations

This amendment proposes to make the State's remining rule consistent with the proposed changes in the State's National Pollutant Discharge Elimination System (NPDES) rules by deleting the phrase ''which began after February 4, 1987, and on a site which was mined prior to August 3, 1977,'' after ''operation''; deleting ''water quality exemptions'' and adding ''effluent limitations'' after ''the''; adding ''Title 47 Series 30 subdivision'' and deleting ''Subsection'' and adding ''6.2.d.'' after ''in''; and finally, deleting ''subsection (p), section 301 of the Federal Clean Water Act, as amended or a coal remining operation as defined in 40 CFR Part 434 as amended may qualify for the water quality exemptions set forth in 40 CFR Part 434 as amended.''

As amended, Subsection 23.3 reads as follows:

23.3 Water Quality

A coal remining operation may qualify for the effluent limitations set forth in Title 47 Series 30 subdivision 6.2.d.

These proposed revisions fall under the provisions of the U.S. Environmental Protection Agency (EPA) coal remining requirements at 40 CFR 434.70–75.

15. CSR 38–2–23.4 Requirements to Release Bonds

This amendment, which relates to bond release, proposes to delete the following language: ''and the terms and conditions set forth in the NPDES Permit in accordance with subsection (p), section 301 of the Federal Clean Water Act, as amended or 40 CFR Part 434 as amended.''

This proposed revision is to eliminate language in its rules that the State finds is no longer essential due to changes in EPA's coal remining requirements (72 FR 68000–68031).

Pursuant to Committee Substitute for Senate Bill 373, West Virginia proposes the following amendments to its Surface Mining Blasting Regulations at Title 199 CSR 1:

16. Title 199 Surface Mining Blasting Rule CSR 199–1–2–2.39

Definitions

Various definitions relating to blasting at CSR 199–1–2–2.39 are amended by nonsubstantive grammatical changes, such as putting all definition terms in quotation marks; changing the term ''Office of Explosives and Blasting'' to ''Secretary''; and renumbering due to additions and/or deletions of terms. Because they are nonsubstantive in nature, these proposed changes are not addressed herein.

The following definitions at CSR 199–1–2 are revised as follows:

At Subsection 2.8, ''*Blast Site*'' is amended and means the area where explosive material is handled during loading into boreholes. This includes the perimeter area formed by the loaded blast holes as measured, 50 feet in all directions from the collar of the outermost loaded borehole; or that area protected from access by a physical barrier to prevent entry to the loaded blast holes.

At Subsection 2.27, ''*Other Structure*'' is amended and means any man made structure excluding ''*protected structures*'' within or outside the permit areas which includes but is not limited to, gas wells, gas lines, water lines, towers, airports, underground mines, tunnels, bridges, and dams. The term does not include structures owned, operated, or built by the permittee for the purpose of carrying out surface mining operations.

At Subsection 2.35, ''*Secretary*'' is substantively identical to former Subsection 2.23 and means the Secretary of the Department of Environmental Protection or the Secretary's authorized agent.

At Subsection 2.36, ''*Structure*'' is amended and means ''a *protected structure*'' or ''*other structure*'' which is any manmade structures within or outside the permit areas which include, but is not limited to, dwellings, outbuildings, commercial buildings, public buildings, community buildings, institutional buildings, gas lines, water lines, towers, airports, underground mines, tunnels and dams. The term does not include structures built and/or utilized for the purpose of carrying out the surface mining operation.

At Subsection 2.37, ''*Supervised a Blasting Crew*'' is amended and means a person that is responsible for the conduct of a blasting crew(s) and/or that the crew(s) is directed by that person.

At Subsection 2.38, ''*Surface Mine Operations*'' is amended and means all areas of surface mines, and surface area of underground mines (including shafts and slopes), areas ancillary to these operations, and the reclamation of these areas, including adjacent areas ancillary to the operations, i.e. , preparation and processing plants, storage areas, shops, haulageways, roads, and trails, which are covered by the provisions of W. Va. Code § 22–3–1 *et seq.,* and rules promulgated under that article.

At Subsection 2.39, ''*Worked on a Blasting Crew*'' is amended and means that a person has first-hand experience in storing, handling, transporting, and using explosives, and has participated in the loading, connecting, and initiation processes of blast, and has experience in blasting procedures, and preparation of blast holes.

These proposed revisions fall under the provisions of section 515(b)(15) of SMCRA and 30 CFR 816/817.61–68 and Part 850.

17. CSR 199–1–3.2. Blasting Plans

Subparagraph 3.2.a.5, regarding blasting plans, is amended by adding language to minimize, not reduce, dust outside the permit area.

Subparagraph 3.2.b, regarding blasting plans, is amended by requiring that the person conducting the review shall be experienced in common blasting practices utilized on surface mining operations and shall be a certified inspector. In addition, the reviewer will take into consideration the proximity of individual dwellings, structures, or communities to the blasting operations.

Subparagraph 3.2.c is amended to provide that the blasting plan shall also contain an inspection and monitoring procedure to insure that all blasting operations are conducted to minimize, not eliminate, to the maximum extent technically feasible, adverse impacts to the surrounding environment and surrounding occupied dwellings. In addition, this subsection is amended to provide that all seismographs used to monitor airblast or ground vibrations or both shall comply with the ISEE Performance Specifications for Blasting Seismographs.

Subparagraph 3.2.d is amended to provide that for operations where a blasting related notice of violation (NOV) or cessation order (CO) has been issued; the Secretary shall review the blasting plan as soon as possible, but within thirty (30) days of final disposition of the NOV or CO.

Subparagraph 3.2.e relating to the review of a blasting plan where an enforcement action has been taken by the State is deleted in its entirety.

These proposed revisions fall under the provisions of 30 CFR 816/817.61.

18. CSR 199–1–3.3 Public Notice of Blasting Operations

Subparagraph 3.3.a, relating to public notice of blasting operations, is amended by requiring that at least ten (10) days but not more than thirty (30) days prior to commencing any blasting operations which detonate five (5) pounds or more of explosives at any given time, the operator must publish a blasting schedule in a newspaper of general circulation in all the counties of the proposed permit area. The operator must republish and redistribute the schedule at least every twelve months in the same manner above. In addition, new language provides that the permittee must retain proof of publication.

At subparagraph 3.3.b.1, new language is added that states, ''Conspicuously place signs reading 'Blasting Area' along the edge of any blasting area that comes within 100 feet of any public road right-of-way, and at the point where any other road provides access to the blasting area; and'' and the existing language as follows is deleted ''Warning signs shall be conspicuously displayed at all approaches to the blasting site, along haulageways and access roads to the mining operation and at all entrances to the permit area. The sign shall at a minimum be two feet by three feet (2′ x 3′) reading 'WARNING! Explosives in Use' and explaining the blasting warning and the all clear signals.''

At subparagraph 3.3.b.2, new language is added that states, ''At all entrances to the permit area from public roads or highways, place conspicuous signs which state 'Warning! Explosives in Use,' which clearly list and describe the meaning of the audible blast warning and all-clear signals that are in use,' and which explain the marking of blasting areas and charged holes awaiting firing within the permit area. The signs shall at a minimum be two feet by three feet (2′ x 3′)'' and the existing language as follows is being deleted ''Where blasting operations will be conducted within one hundred (100) feet of the outside right-of-way of a public road, signs reading ''Blasting Area'', shall be conspicuously placed along the perimeter of the blasting area''.

These proposed revisions fall under the provisions of 30 CFR 816/817.44 and 816/817.66.

19. CSR 199–1–3.4 Surface Blasting at Underground Mines

This amendment proposes to add a new subparagraph, 3.4.b, regarding the regulation of surface blasting at underground mines.

Subparagraph 3.4.b is amended by adding new language that provides that blasting activities for the development of slopes and shafts will be subject to this rule and regulated as surface blasting. The operator will submit a blast plan for the initial developmental blast of shafts and slopes, which will consider all aspects of surface coal mine blasting contained in 199 CSR 1. The Secretary will then only regulate and monitor for surface effects from ground vibration and airblast for the remainder of the shaft or slope until it intersects the coal seam to be mined.

These proposed revisions fall under the provisions of 30 CFR 817.64.

20. CSR 199–1–3.5 Blast Record

Subparagraph 3.5.a is amended to require that a blasting log book be on forms formatted in a manner prescribed by the Secretary.

Subparagraph 3.5.c is amended to provide that the blasting log shall contain, at a minimum, but not limited to, the following information:

Subparagraph 3.5.c.1 is amended to require the name of the company conducting blasting;

Subparagraph 3.5.c.2 is amended to require the Article 3 permit number and shot number;

Subparagraph 3.5.c.4 is amended to require the identification of nearest other structure not owned or leased by the operator, and indicate the direction and distance, in feet, to both such structures;

Subparagraph 3.5.c.5 is amended to require estimated wind direction and speed;

Subparagraph 3.5.c.6 is amended by adding a proviso to identify material blasted, including rock type and description of conditions;

Subparagraph 3.5.c.9 is amended to require a description of different quantities of explosives used;

Subparagraph 3.5.c.14 is amended to require type and length of decking;

Subparagraph 3.5.c.15 is amended to require a description of use of blasting mats or other protective measures used;

Subparagraph 3.5.c.16 is amended to require the quantities of delay detonators used;

Subparagraph 3.5.c.17 is amended by adding the words ''when required'' in relation to seismograph records and air blast records;

Subparagraph 3.5.c.17.A is amended to require that seismograph and air blast readings include trigger levels, frequency in Hz, and full waveform readings shall be attached to the blast log;

Subparagraph 3.5.c.17.B is amended to require the name of the person who installed the seismograph, also the name of the person taking the readings;

Subparagraph 3.5.c.17.D is amended to require certification of annual calibration;

Subparagraph 3.5.c.18 is amended to require that the shot location be identified with use of blasting grids as found on the blast map, GPS, or other methods as defined by the approved blast plan;

Subparagraph 3.5.c.19 is amended by deleting the requirement for a sketch of the delay pattern for all decks and to require a detailed sketch of delay pattern, including the detonation timing for each hole or deck in the entire blast pattern, borehole loading configuration, north arrow, distance and directions to structures; and

Subparagraph 3.5.c.20 is amended to require the reasons and conditions to be noted in the blasting log for misfires, any unusual event, or violation of the blast plan.

These proposed revisions fall under the provisions of 30 CFR 816/817.68.

21. CSR 199–1–3.6. Blasting Procedures

Subparagraph 3.6.b.2 is amended to require that all approaches to the blast area remain guarded until the blaster signals the ''all clear''.

Subparagraph 3.6.c.1 regarding airblast limits is amended to provide that the maximum level in Hz be no more than –3dB. In addition, Footnote 1 was added to clarify that airblast is a flat response from 4 to 125 Hz range; at 2 Hz airblast, the microphone can have an error of no more than –3dB. Footnote 2 was added to clarify that the use of the frequency limits of 0.1 Hz or lower—flat response or C-weighted—slow response requires the Secretary's approval.

Subparagraph 3.6.c.3 is amended to require that all seismic monitoring follow the International Society of Explosives Engineers (ISEE) Field Practice Guidelines for Blasting Seismographs, unless otherwise approved in the blasting plan.

Subparagraph 3.6.g is amended to provide that blasting within five hundred (500) feet of an underground mine not totally abandoned requires the concurrence of the Secretary, and the West Virginia Office of Miners Health Safety and Training.

Subparagraph 3.6.i is amended to require that all seismic monitoring follow the ISEE Field Practice Guidelines for Blasting Seismographs, unless otherwise approved in the blasting plan.

Subparagraph 3.6.l is amended by adding a reference to 3.6.i in relation to the maximum airblast and ground vibration standards that do not apply to structures owned by the permittee and leased or not leased to another person.

These proposed revisions fall under the provisions of 30 CFR 816/817.66, 816/817.67 and 816.79.

22. CSR 199–1–3.7 Blasting Control for ''Other Structures''

Subparagraph 3.7.a is amended by adding language to require that all ''other structures'' in the vicinity of the blasting area be protected from damage by the limits specified in paragraph 3.6.c.1 subdivisions 3.6.h. and 3.6.i. of this rule, unless waived in total or in part by the owner of the structure.

In addition, the waiver of the protective [limits] may be accomplished by the establishment of a maximum allowable limit on air blast limits for the structure in the written waiver agreement between the operator and the structure owner. The waiver may be presented at the time of application in the blasting plan or provided at a later date and made available for review and approval by the Secretary.

All waivers must be acquired before any blasts may be conducted [as] designed on that waiver. Language requiring that the operator specify the waiver in the blasting plan and that the Secretary approve all waivers is being deleted. In addition, language providing for alternative maximum allowable limits is being deleted.

These proposed revisions fall under the provisions of 30 CFR 816/817.67.

23. CSR 199–1–3.8 Pre-Blast Surveys

Subparagraph 3.8.a is amended by adding language to provide that at least thirty days prior to commencing blasting, an operator's designee shall notify in writing all owners and occupants of man made dwellings or structures that the operator or operator's designee will perform preblast surveys.

In addition, language is added to require that attention be given to documenting and establishing the pre-blasting condition of wells and other water systems.

Subparagraph 3.8.b is amended by adding language to require that surveys requested more than ten (10) days before the planned initiation of the blasting shall be completed and submitted to the Secretary by the operator before the initiation of blasting.

These proposed revisions fall under the provisions of 30 CFR 816/817.62.

24. CSR 199–1–3.9 Pre-blast Surveyors

Subparagraph 3.9.a is amended to require that, at a minimum, individuals applying as a pre-blast surveyor must have a combination of at least two (2) of the following;

3.9.a.1 experience in conducting pre-blast surveys, or

3.9.a.2 technical training in a construction, or engineering related field, or

3.9.a.3 other related training deemed equivalent by the Secretary.

In addition, language was added to clarify that all applicants must complete the pre-blast surveyor training provided by the Secretary prior to approval to conduct pre-blast surveys. The Secretary may establish a fee for approval of pre-blast surveyors. Language is being deleted which provides that experience working as a pre-blast surveyor may be acceptable in lieu of the education requirement.

Subparagraph 3.9.c is amended to clarify that every three (3) years after meeting initial qualifications for performing pre-blast surveys, those individuals that have met the requirements of subparagraph 3.9.a. of this rule must submit a written demonstration of qualifications of and ongoing experience performing pre-blast surveys.

In addition, language was added to provide that those individuals who have no ongoing experience must attend the training required in 3.9.a. and all applicants for re-approval must attend a minimum of 4 hours continuing education training in a subject area relative to knowledge required for conducting pre-blast surveys. Furthermore, the Secretary must approve these training programs.

Subparagraph 3.9.d is amended by adding language to require that individuals who assist in the collection of information for pre-blast surveys must complete, or be registered for, the pre-blast surveyor training provided by the Secretary in 3.9.a. Those registered to attend the next available training on the pre-blast survey requirements may assist in the collection of information for a period of no more than three (3) months, and only under the direct supervision of an approved Pre-blast Surveyor. The Secretary shall maintain a list of all those individuals who have completed the pre-blast survey requirement training.

Subparagraph 3.9.d is also amended by deleting language which provides that an individual who is not an approved pre-blast surveyor may conduct pre-blast surveys, working as a pre-blast surveyor-in-training, only if he or she has registered to attend pre-blast surveyor training at the next available opportunity. Pre-blast surveyors-in-training may conduct pre-blast surveys, only if he or she is conducting the survey under the direct supervision of an approved pre-blast surveyor. The approved pre-blast surveyor must co-sign any survey conducted by a pre-blast surveyor-in-training. Individuals may work as pre-blast surveyors-in-training for a period of no more than three months, prior to becoming approved pre-blast surveyors.

Subparagraph 3.9.e is amended to provide that the Secretary may disqualify an approved pre-blast surveyor and remove the person from the list of approved pre-blast surveyors, if the person allows surveys to be submitted that do not meet the requirements of W. Va. Code 22–3-13a and subsection 3.8 of this rule. In addition, language was added to provide that any person who is disqualified may appeal to the Secretary, and if not resolved to the Surface Mine Board.

These proposed revisions fall under the provisions of 30 CFR 816/817.62.

25. CSR 199–1–3.10 Pre-Blast Survey Review

Subparagraph 3.10.f is amended by adding language to provide that all persons employed by the Secretary, whose duties include review of pre-blast surveys and training of pre-blast surveyors, shall meet the requirements for pre-blast surveyors as set forth in section 3.9.

These proposed revisions fall under the provisions of 30 CFR 816/817.62.

26. CSR 199–1–4.1 Blaster Certification Requirements

Subparagraph 4.1.a is amended to require each person acting in the capacity of a blaster and responsible for the blasting operation be certified by the Secretary.

Subparagraph 4.1.b is amended to require that each applicant for certification be a minimum of twenty one (21) years old. In addition, new language was added to provide that applicants who have blasting experience prior to the last three years, with documentation, may be considered by

the Secretary on a case-by-case basis as qualifying experience for initial certification and re-certification; provided the requirements of 4.6.c. apply.

Subparagraph 4.1.c is amended to clarify that the application for certification be on forms prescribed by the Secretary.

These proposed revisions fall under the provisions of 30 CFR 816/817.61 and 850.14.

27. CSR 199–1–4.2 Training

Subsection 4.2 is amended by adding language to provide that the training program will consist of the West Virginia Surface Mine Blasters Self-Study Guide Course and a classroom review of the self-study guide course.

In addition, language was added to provide that completion of the classroom review part of the training program may not be required for first time applicants.

Furthermore, applicants for certification or applicants for re-certification, who cannot document the experience requirements specified in subdivision 4.1.b. of this rule, must complete the West Virginia Surface Mine Blasters Self-Study Guide.

Subparagraph 4.2.a is amended to provide that, prior to certification, all applicants, not just those who choose self study, attend a two (2) hour Blaster's Responsibilities training session addressing certified blasters' responsibilities and the disciplinary procedures contained in subsections 4.9 and 4.10 of this rule.

These proposed revisions fall under the provisions of the Federal blaster certification requirements at 30 CFR 850.13.

28. CSR 199–1–4.3 Examination

Subparagraph 4.3.b is amended to clarify that the examination for certified blaster consists of three parts.

Subparagraph 4.3.d is amended to clarify that any person who fails to pass any part of the exam on the second attempt or every other subsequent attempt must certify that he/she has taken or retaken the classroom review training program described in subsection 4.2 of this rule prior to applying for another examination.

These proposed revisions fall under the provisions of the Federal blaster certification requirements at 30 CFR 850.14.

29. CSR 199–1–4.5 Blaster Certification Prohibitions

Subparagraph 4.5.d is amended by adding language to provide that persons who have had their blasters certification suspended or revoked in any other state may be required to show cause as to why they should be considered for certification.

These proposed revisions fall under the provisions of the Federal blaster certification requirements at 30 CFR 850.15.

30. CSR 199–1–4.6 Retraining

Subparagraph 4.6.c is amended to clarify that an applicant for recertification who does not meet the experience requirements of subdivision 4.1.b of this rule must take the training course defined in section 4.2.

These proposed revisions fall under the provisions of the Federal blaster certification requirements at 30 CFR 850.15.

31. CSR 199–1–4.7 Blaster's Certificate

Subparagraph 4.7.d is amended by adding language to clarify that a certified blaster shall not take any instruction or direction on blast design, explosives loading, handling, transportation and detonation from a person not holding a West Virginia blasters certificate, if such instruction or direction may result in an unlawful act, or an improper or unlawful action that may result in unlawful effects of a blast.

In addition, a person not holding a West Virginia blasters certification who requires a certified blaster to take such action may be prosecuted under W. Va. Code 22–3–17(c) or (i).

These proposed revisions fall under the provisions of the Federal blaster certification requirements at 30 CFR 850.15.

32. CSR 199–1–4.9.a Suspension and Revocation

Subparagraph 4.9.a.2 is amended by adding language relating to Imminent Harm Suspension. The new language is as follows:

A certified inspector has the authority to issue a temporary suspension order to a certified blaster when an imminent danger to the health or safety of the public exists, or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resource by any condition, practice, or violation of this rule or any permit condition. The temporary suspension order shall take effect immediately.

4.9.a.2.A. The Secretary shall formally investigate the incident(s) and provide written findings to the blaster within fifteen days following the effective date of the temporary suspension.

4.9.a.2.B. Informal Conference—Unless waived in writing by the certified blaster, an informal conference shall be held at or near the site relevant to the violation. This informal conference shall be held within twenty-four hours after the temporary suspension order becomes effective. The conference shall be held before the Secretary, who shall evaluate the blasters' performance and upon conclusion of the hearing shall; determine if the temporary suspension of the blaster shall remain in force, withdraw the suspension, or uphold in part.

4.9.a.2.C. Appeal to the Secretary—If a blaster chooses to appeal the results of the informal conference or the written findings of the initial investigation; they may appeal the results within in five days to the Secretary. The appeal shall include written reasons for the appeal. The Secretary shall conduct a hearing within ten days of receipt of the appeal.

4.9.a.2.D. Any blaster receiving a temporary suspension may appeal the decision of the Secretary to the Surface Mine Board.

4.9.a.5 is amended by adding language to provide that any blaster receiving a suspension or revocation may appeal the decision to the Secretary and to the Surface Mine Board.

These proposed revisions fall under the provisions of the Federal blaster certification requirements at 30 CFR 850.15.

33. CSR 199–1–4.13 Blasting Crew

Subsection 4.13 is amended to provide that persons who are not certified and who are assigned to a blasting crew, or assist in the use of explosives, shall receive directions and on-the-job training from the certified blaster in the technical aspects of blasting operations, including applicable state and federal laws governing the storage, transportation, and proper use of explosives.

These proposed revisions fall under the provisions of the Federal blaster certification requirements at 30 CFR 816/817.61 and 850.13.

34. CSR 199–1–4.14 Reciprocity With Other States

Subsection 4.14 is amended by adding language to clarify that reciprocity is a one time only process. Any blaster who has been issued a certification through reciprocity and fails to meet the recertification requirements will be required to reexamine and may be required to provide refresher training documentation, as per section 4.6.a of this rule.

These proposed revisions fall under the provisions of Section 719 of SMCRA and 30 CFR Part 850.

35. CSR 199–1–5.2 Filing a Blasting Damage Claim

Subparagraph 5.2.a is amended to clarify that only a certified inspector will be assigned to conduct a field investigation to determine the initial merit of the damage claim and what such an investigation by a certified inspector is to include.

Subparagraph 5.2.a.3 is amended to require that the inspector will make a

written report on the investigation that describes the nature and extent of the alleged damage, taking into consideration the condition of the structure, observed defects, or pre-existing damage that is accurately indicated on a pre-blast survey, conditions of the structure that existed where there has been no blasting conducted by the operator, or other reliable indicators that the alleged damage actually pre-dated the blasting by the operator.

In addition, the language was revised to clarify that the inspector will make one of the initial determinations in 5.2.a.3.A. through 5.2.a.3.C., notify the claims administrator, make a recommendation on the merit of the claim, and supply information that the claims administrator needs to sufficiently document the claim.

The possible determinations are:

5.2.a.3.A. There is merit that blasting caused the alleged damage; or

5.2.a.3.B. There is no merit that blasting caused the alleged damage.

5.2.a.3.C. The determination of merit as to whether blasting caused or did not cause the alleged damage cannot be made.

Subparagraph 5.2.a.4 is amended by deleting former 5.2.a.3.C and adding similar language to clarify that the inspector will inform the property owner of the following four resolution options available for the alleged blasting damage:

5.2.a.4.A. Withdraw the claim, with no further action required by the Secretary;

5.2.a.4.B. File a claim with the operator or the operator's general liability insurance carrier;

5.2.a.4.C. File a claim with the homeowner's insurance carrier; or

5.2.a.4.D. Submit to the Secretary's claims process.

Subparagraph 5.2.a.5 is amended by deleting and adding language to provide that if the property owner declines part 5.2.a.4.D of this rule, the Secretary's involvement will be concluded.

Subparagraph 5.2.a.6 is amended to clarify that the determination as to the merit of a claim is to be made by the inspector.

These proposed revisions fall under the provisions of 30 CFR 816/817.62.

36. CSR 199–1–6 Arbitration for Blasting Damage Claims

Subsection 6.1, relating to the listing of arbitrators, is amended by adding language to provide that once a year the Environmental Advocate, and industry representatives (selected by the West Virginia Coal Association, Inc.) may move to strike up to twenty-five percent (25%) of the list, with cause.

Subsection 6.4 is amended by adding language to require the parties for arbitration shall choose an arbitrator within fifteen (15) days of receipt of the notice.

These proposed revisions fall under the provisions of Section 515(b)(15) of SMCRA and 30 CFR 816/817.62.

37. CSR 199–1–7 Explosive Material Fees

Subsection 7.2 is amended by adding language to require copies of blast logs to verify the accuracy of the report and fee calculation made by operators.

Subsection 7.3 is amended by adding language that for the purpose of this section; detonators, caps, detonating cords, and initiation systems are exempt from the calculation for explosive material fees. However, the Secretary may require reporting on the use of these products.

These proposed revisions fall under the provisions of sections 515(b)(15) and 719 of SMCRA.

Pursuant to Committee Substitute for Senate Bill 751, West Virginia proposes the following amendments to section 22–3–11 of the WVSMCRA:

38. WVSCMRA 22–3–11 Bonds; Amount and Method of Bonding; Bonding Requirements; Special Reclamation Tax and Funds; Prohibited Acts; Period of Bond Liability.

This amendment revises section 22–3–11 of the WVSCMRA relating to the State's alternative bonding system. As stated in the WVDEP's April 8, 2008, letter transmitting the program amendment, the revisions contained in Committee Substitute for Senate Bill 751 related ''* * * generally to the special reclamation tax by establishing the Special Reclamation Water Trust Fund; continuing and reimposing a tax on clean coal mined for deposit into both funds; requiring the secretary to look at alternative programs; and authorizing secretary to promulgate legislative rules implementing the alternative programs.'' Only substantive statutory revisions are addressed herein. Nonsubstantive editorial, formatting or recodification changes are not addressed in this rule.

The provisions relating to the creation of the Special Reclamation Water Trust Fund and the reinstatement and increase in the special reclamation tax to seven and four-tenths cents per ton as contained in section 22–3–11 (g) and (h)(1), respectively, have been approved by OSM on an interim basis in a separate **Federal Register** notice (June 16, 2008; 73 FR 33884). These provisions, while summarized in this amendment, are subject to public notice and comment in that separate **Federal Register** notice. OSM will render a final decision either separately or jointly on those provisions and all other provisions identified herein relating to the State's alternative bonding system after the close of both public comment periods.

Subsection 22–3–11(a) of the WVSCMRA is amended by adding language to provide that the penal amount of the bond shall be for each acre or fraction of an acre.

Subsection 22–3–11(g) of the WVSCMRA is amended by adding language to provide that the Special Reclamation Fund previously created is continued. In addition, the Special Reclamation Water Trust Fund is created within the State Treasury into and from which moneys shall be paid for the purpose of assuring a reliable source of capital to reclaim and restore water treatment systems on forfeited sites. The moneys accrued in both funds, any interest earned thereon and yield from investments by the State Treasurer or West Virginia Investment Management Board are reserved solely and exclusively for the purposes set forth in this section and section seventeen, article one of this chapter.

The funds shall be administered by the secretary who is authorized to expend the moneys in both funds for the reclamation and rehabilitation of lands which were subjected to permitted surface mining operations and abandoned after the third day of August, one thousand nine hundred seventy-seven, where the amount of the bond posted and forfeited on the land is less than the actual cost of reclamation, and where the land is not eligible for abandoned mine land reclamation funds under article two of this chapter. The secretary shall develop a long-range planning process for selection and prioritization of sites to be reclaimed so as to avoid inordinate short-term obligations of the assets in both funds of such magnitude that the solvency of either is jeopardized. The secretary may use both funds for the purpose of designing, constructing and maintaining water treatment systems when they are required for a complete reclamation of the affected lands described in this subsection. The secretary may also expend an amount not to exceed ten percent of the total annual assets in both funds to implement and administer the provisions of this article and, as they apply to the Surface Mine Board, articles one and four, chapter twenty-two-b of this code.

Subsection 22–3–11(h)(1) of the WVSCMRA is amended by adding language to provide that for tax periods commencing on and after the first day of July, two thousand eight, every person conducting coal surface mining shall remit a special reclamation tax as follows:

(A) For the initial period of twelve months, ending the thirtieth day of June, two thousand nine, seven and four-tenths cents per ton of clean coal mined, the proceeds of which shall be allocated by the secretary for deposit in the Special Reclamation Fund and the Special Reclamation Water Trust Fund;

(B) An additional seven cents per ton of clean coal mined, the proceeds of which shall be deposited in the Special Reclamation Fund. The tax shall be levied upon each ton of clean coal severed or clean coal obtained from refuse pile and slurry pond recovery or clean coal from other mining methods extracting a combination of coal and waste material as part of a fuel supply. The additional seven-cent tax shall be reviewed and, if necessary, adjusted annually by the Legislature upon recommendation of the council pursuant to the provisions of section seventeen, article one of this chapter: *Provided*, That the tax may not be reduced until the Special Reclamation Fund and Special Reclamation Water Trust Fund have sufficient moneys to meet the reclamation responsibilities of the state established in this section.

Subsection 22–3–11(h)(2) of the WVSCMRA is amended to clarify that in managing the Special Reclamation Program, the secretary shall:

(A) Pursue cost-effective alternative water treatment strategies; and

(B) Conduct formal actuarial studies every two years and conduct informal reviews annually on both the Special Reclamation Fund and Special Reclamation Water Trust Fund.

Subsection 22–3–11(h)(3) of the WVSCMRA is amended to delete obsolete language relating to tasks that were to be completed by the secretary by December 31, 2005, and adding language to provide that prior to the thirty-first day of December, two thousand eight, the secretary shall:

(A) Determine the feasibility of creating an alternate program, on a voluntary basis, for financially sound operators by which those operators pay an increased tax into the Special Reclamation Fund in exchange for a maximum per acre bond that is less than the maximum established in subsection (a) of this section;

(B) Determine the feasibility of creating an incremental bonding program by which operators can post a reclamation bond for those areas actually disturbed within a permit area, but for less than all of the proposed disturbance and obtain incremental release of portions of that bond as reclamation advances so that the released bond can be applied to approved future disturbance; and

(C) Determine the feasibility for sites requiring water reclamation by creating a separate water reclamation security account or bond for the costs so that the existing reclamation bond in place may be released to the extent it exceeds the costs of water reclamation.

Subsection 22–3–11(h)(4) of the WVSCMRA is amended to provide that if the secretary determines that the alternative program, the incremental bonding program or the water reclamation account or bonding programs reasonably assure that sufficient funds will be available to complete the reclamation of a forfeited site and that the Special Reclamation Fund will remain fiscally stable, the secretary is authorized to propose legislative rules in accordance with article three, chapter twenty-nine-a of this code to implement an alternate program, a water reclamation account or bonding program or other funding mechanisms or a combination thereof.

Subsection 22–3–11(l) of the WVSCMRA is amended by adding language to clarify that the Tax Commissioner shall deposit the moneys collected with the Treasurer of the State of West Virginia to the credit of the Special Reclamation Fund and Special Reclamation Water Trust Fund. Existing language providing that the moneys in the fund are to be placed by the Treasurer in an interest bearing account with the interest being returned to the fund on an annual basis is being deleted.

Subsection 22–3–11(m) of the WVSCMRA is amended by adding the words ''in both funds'' at the end of the sentence. The provision now reads, ''At the beginning of each quarter, the secretary shall advise the State Tax Commissioner and the Governor of the assets, excluding payments, expenditures and liabilities, in both funds.''

These proposed revisions fall under the provisions of section 509(c) of SMCRA and 30 CFR 800.11(e).

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether these amendments satisfy the applicable program approval criteria of 30 CFR 732.15. If we approve these revisions, they will become part of the West Virginia program.

Written Comments

Send your written comments to OSM at one of the addresses given above. Your comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We may not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see **DATES**) or sent to an address other than those listed above (see **ADDRESSES**).

Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m. EDT on July 23, 2008. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If there is limited interest in participation in a public hearing, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings

will be open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on an analysis of the State submission.

Executive Order 12866—Regulatory Planning and Review

This rule is exempt from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally recognized Indian tribes and have determined that the rule does not have substantial direct effects 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. The basis for this determination is that our decision is on a State regulatory program and does not involve a Federal regulation involving Indian lands.

Executive Order 13211—Regulations that Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior 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.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the analysis performed under various laws and executive orders for the counterpart Federal regulations.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the analysis performed under various laws and executive orders for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 9, 2008.

Thomas D. Shope,

Regional Director, Appalachian Region.

[FR Doc. E8–15438 Filed 7–7–08; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–0422]

RIN 1625–AA00

Safety Zones: Central Massachusetts August Swim Events

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes establishing safety zones for two swimming events in the Captain of the Port Boston zone. This rule is intended

to restrict vessels from entering portions of the involved waterways during the respective events. The safety zones are necessary to protect participants and vessels from the hazards associated with a swim event.

DATES: Comments and related material must reach the Coast Guard on or before August 7, 2008.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2008–0422 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

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

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

(3) *Hand delivery:* Room W12–140 on the Ground Floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* 202–493–2251.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call Chief Petty Officer Eldridge McFadden at 617–223–3000. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

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

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2008–0422), indicate the specific section of this document to which each comment applies, and give the reason for each comment. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov* at any time. Enter the docket number for this rulemaking (USCG–2008–0422) in the Search box, and click ''Go >>.'' You may also visit either the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; or U.S. Coast Guard, Sector Boston, 427 Commercial St, Boston, MA 02109 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://DocketsInfo.dot.gov*.

Public Meeting

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

Background and Purpose

Temporary safety zones are necessary to ensure the safety of vessels, participants, and spectators at swimming events. Swim events pose a significant risk to the public because of the combination of numerous swimmers, high-speed vessels, and potentially congested waterways. A safety zone will reduce the risk to the public by separating swimmers from vessel traffic.

Discussion of Proposed Rule

The safety zones established are necessary to ensure the safety of vessels and people during events in the Captain of the Port Boston area of responsibility, which may pose a hazard to the public. The safety zones described in subparagraph (a) for this regulation will be enforced only immediately before and during the event. The Captain of the Port Boston will inform the public by all appropriate means including Broadcast Notice to Mariners, Local Notice to Mariners, and on-scene Coast Guard or Coast Guard Auxiliary units.

Regulatory Analyses

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

Regulatory Planning and Review

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Assessment is unnecessary.

The Coast Guard's implementation of these safety zones will be of short duration and designed to minimize the impact on navigable waters. These safety zones will only be enforced immediately before and during the time the swimmers are in the water. Furthermore, these safety zones have been designed to allow vessels to transit unrestricted to portions of the waterway not affected by the safety zone. The Coast Guard expects insignificant adverse impact to mariners from the activation of this safety zone.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities.

The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

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

This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in the areas designated as safety zones in subparagraphs (a) during the date and time the safety zones are being enforced. These safety zones would not have a significant economic impact on a substantial number of small entities for the following reasons: The safety zones in this proposed rule would be in effect for short periods, and will not preclude vessels from transit outside the zones.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Chief Petty Officer Eldridge McFadden at 617–223–3000. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is not likely to have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this preliminary determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. *Add temporary § 165.T01–0422 to read as follows: § 165.T01–0422 Safety Zones: Central Massachusetts August Swim Events.*

(a) *Location.* The following swim events include safety zones as described herein:

(1) *Plymouth Rock Triathlon, Plymouth Inner Harbor, Plymouth, MA*

(i) All waters of Plymouth Inner Harbor, from surface to bottom.

(ii) *Effective Date.* This rule will be enforced from 7:30 a.m. through 12:30 p.m. on August 31, 2008.

(2) *30th Annual Celebrate the Clean Harbor Swim, Gloucester Harbor, Gloucester, MA*

(i) All waters of Gloucester Harbor, from surface to bottom, within the zone marked by two buoys west of Niles Beach.

(ii) *Effective Date.* This rule will be enforced from 8:30 a.m. through 12:30 p.m. on August 16, 2008, with a rain date of August 17, 2008 at the same times.

(b) *Definition:* As used in this section, designated representative means any Coast Guard commissioned, warrant, or petty officer, or any federal, state, or local law enforcement officer authorized to enforce this regulation on behalf of the Coat Guard Captain of the Port (COTP).

(c) *Regulations.* (1) In accordance with the general regulations in section 165.23 of this part, entry into or remaining in the safety zones described in paragraph (a) of this section is prohibited unless authorized by the Coast Guard Captain of the Port (COTP), Boston, or the COTP's designated representative.

(2) Persons desiring to transit within the safety zones established in this section may contact the Captain of the Port at telephone number 617–223–3008 or via on-scene patrol personnel on VHF channel 16 to seek permission to do so. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

Dated: June 24, 2008.

Gail P. Kulisch,

Captain, U.S. Coast Guard, Captain of the Port Boston.

[FR Doc. E8–15388 Filed 7–7–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

Negotiated Rulemaking Advisory Committee for Off-Road Vehicle Management for Cape Hatteras National Seashore

AGENCY: National Park Service (NPS), Interior.

ACTION: Notice of Sixth, Seventh, Eighth and Ninth Meetings.

SUMMARY: Notice is hereby given, in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App 1, section 10), of the sixth, seventh, eighth and ninth meetings of the Negotiated Rulemaking Advisory Committee for Off-Road Vehicle Management at Cape Hatteras National Seashore. (See **DATES** section.)

DATES: The Committee will hold its sixth meeting on September 8–9, 2008, from 8:30 a.m. to 5:30 p.m. on September 8, and from 8:30 a.m. to 4 p.m. on September 9. The meetings on both days will be held at the Avon Fire Hall, 40159 Harbor Drive, Avon, North Carolina 27915. The Committee will hold its seventh meeting on October 22–23, 2008, from 8:30 a.m. to 5:30 p.m. on October 22, and from 8:30 a.m. to 4 p.m. on October 23. The meetings on both days will be held at the Hatteras Village Civic Center, 56658 Highway 12, Hatteras, NC 27943. The Committee will hold its eighth meeting on November 14–15, 2008, from 8:30 a.m. to 5:30 p.m. on November 14, and from 8:30 a.m. to 4 p.m. on November 15. The meetings on both days will be held at the Clarion Hotel, 1601 South Virginia Dare Trail, Kill Devil Hills, NC 27948. The Committee will hold its ninth meeting on December 11–12, 2008, from 8:30 a.m. to 5:30 p.m. on December 11, and from 8:30 a.m. to 4 p.m. on December 12. The meetings on both days will be held at the Avon Fire Hall, 40159 Harbor Drive, Avon, North Carolina 27915.

These, and any subsequent meetings, will be held for the following reason: To work with the National Park Service to assist in potentially developing special regulations for ORV management at Cape Hatteras National Seashore.

The proposed agenda for the sixth, seventh, eighth and ninth meetings of the Committee may contain the following items: Approval of Meeting Summary from Last Meeting, Subcommittee and Members' Updates since Last Meeting, Alternatives Discussions, NEPA Update, and Public Comment. However, the Committee may modify its agenda during the course of its work. The meetings are open to the public. Interested persons may provide brief oral/written comments to the Committee during the public comment period of the meetings each day before the lunch break or file written comments with the Park Superintendent.

FOR FURTHER INFORMATION CONTACT: Mike Murray, Superintendent, Cape Hatteras National Seashore, 1401 National Park Drive, Manteo, North Carolina 27954, (252) 473–2111, ext. 148.

SUPPLEMENTARY INFORMATION: The Committee's function is to assist directly in the development of special regulations for management of off-road vehicles (ORVs) at Cape Hatteras National Seashore (Seashore). Executive Order 11644, as amended by Executive Order 11989, requires certain Federal agencies to publish regulations that provide for administrative designation of the specific areas and trails on which ORV use may be permitted. In response, the NPS published a general regulation at 36 CFR 4.10, which provides that each park that designates routes and areas for ORV use must do so by promulgating a special regulation specific to that park. It also provides that the designation of routes and areas shall comply with Executive Order 11644, and 36 CFR Sec. 1.5 regarding closures. Members of the Committee will negotiate to reach consensus on concepts and language to be used as the basis for a proposed special regulation, to be published by the NPS in the **Federal Register**, governing ORV use at the Seashore. The duties of the Committee are solely advisory.

Dated: June 9, 2008.

Michael B. Murray,

Superintendent, Cape Hatteras National Seashore.

[FR Doc. E8–15418 Filed 7–7–08; 8:45 am]

BILLING CODE 4310–X6–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R05–OAR–2008–0952; FRL–8687–9]

Direct Final Approval of Revised Municipal Waste Combustor State Plan for Designated Facilities and Pollutants: Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is approving revisions to Indiana's State Plan to control air pollutants from large Municipal Waste Combustors (MWC). The Indiana Department of Environmental Management (IDEM) submitted the State Plan on August 24, 2007. The revisions are consistent with Emission Guideline (EG) amendments promulgated by EPA on May 10, 2006. This approval means that EPA finds that the State Plan amendments meet applicable Clean Air Act (Act) requirements for large MWCs for which construction commenced on or before September 20, 1994. Once effective, this approval also makes the amended State Plan Federally enforceable.

DATES: Comments must be received on or before August 7, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2008–0952, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: nash.carlton@epa.gov.*
- *Fax:* (312) 886–6030.
- *Mail:* Carlton T. Nash, Chief, Integrated Air Toxics Section, Air Toxics and Assessment Branch (AT–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
- *Hand Delivery:* Carlton T. Nash, Chief, Integrated Air Toxics Section, Air Toxics and Assessment Branch (AT–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. 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: Margaret Sieffert, Environmental Engineer, Environmental Protection Agency, Region 5, 77 West Jackson Boulevard (AT–18J), Chicago, Illinois 60604, (312) 353–1151, *sieffert.margaret@epa.gov* or Michele Palmer, Environmental Engineer, Environmental Protection Agency, Region 5, 77 West Jackson Boulevard (ML–10C), Chicago, Illinois 60604, (312) 353–3646, *palmer.michele@epa.gov*.

SUPPLEMENTARY INFORMATION: In the 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: June 24, 2008.

Richard C. Karl,

Acting Regional Administrator, Region 5.

[FR Doc. E8–15347 Filed 7–7–08; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 27

[WT Docket Nos. 03–66; 03–67; 02–68; IB Docket No. 02–364; ET Docket No. 00–258; FCC 08–83]

Facilitating the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150–2162 and 2500–2690 MHz Bands; Reviewing of the Spectrum Sharing Plan Among Non-Geostationary Satellite Orbit Mobile Satellite Service Systems in the 1.6/2.4 GHz Bands

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: In this document, the Commission extends the comment and reply comment deadlines. This action is taken in order to provide a limited extension to serve the public interest by allowing parties to discuss the complex issues at stake, develop consensus approaches where possible, and prepare thorough comments while ensuring that the proceeding is expeditiously resolved and to promote the Commission's goal of encouraging deployment of wireless broadband networks over EBS and BRS spectrum, by facilitating a consensus among interested parties on the relevant issues.

DATES: Submit comments on or before September 22, 2008. Submit reply comments on or before October 22, 2008.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. You may submit comments, identified by DA 08–1523, or by WT Docket No. 03–66, RM–10586; WT Docket No. 03–67; WT Docket No. 02–68, RM–9718, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Federal Communications Commission's Web Site: *http://www.fcc.gov/cgb/ecfs/*. Follow the instructions for submitting comments.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: (202) 418–0530 or TTY: (202) 418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: John Schauble, Deputy Chief, Broadband Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554, at (202) 418–0797 or via the Internet to *John.Schauble@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of an *Order*, DA 08–1523, adopted and released by the FCC on June 26, 2008, in WT Docket Nos. 03–66, RM–10586; 03–67, and 02–68, RM–9718. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (202) 488–5300, facsimile (202) 488–5563, or via e-mail at *fcc@bcpiweb.com.* The complete text is also available on the Commission's Web site at *http://wireless.fcc.gov/edocs public/*

attachment/DA 08–1523A1doc. This full text may also be downloaded at: *http://wireless.fcc.gov/releases.html.* Alternative formats (computer diskette, large print, audio cassette, and Braille) are available by contacting Brian Millin at (202) 418–7426, TTY (202) 418–7365, or via e-mail to *bmillin@fcc.gov.*

Summary of the Order

1. On March 20, 2008, the Commission released the *Broadband Radio Service/Educational Broadband Service Second Further Notice of Proposed Rulemaking* (BRS/EBS 2nd FNPRM), FCC 08–83. In the BRS/EBS 2nd FNPRM, comments were due on or before July 7, 2008, and reply comments were due on or before August 6, 2008. On May 8, 2008, a summary of the BRS/EBS 2nd FNPRM was published in the **Federal Register** (73 FR 26067, May 8, 2008).

2. On June 13, 2008, National EBS Association (''NEBSA''), formerly known as the National ITFS Association (NIA) and the Catholic Television Network (''CTN'') filed a motion for extension of time on June 13, 2008, to extend by 75 days the dates for filing comments and reply comments in the proceeding. NEBSA and CTN state that the comment dates ''fall in the middle of the summer recess period for virtually all schools, colleges and universities, making it difficult for NEBSA, CTN, EBS licensees and other educators to coordinate their response to the important issues raised in this proceeding.'' The Wireless Communications Association International, Inc. supports this request. No party has opposed the request.

3. It is the policy of the Commission that extensions of time are not routinely granted pursuant to 47 CFR 1.46(a). Such extensions may be warranted when, among other reasons, the additional time will serve the public interest. In the present instance, we grant NEBSA and CTN's motion for extension of time by extending by 75 days the deadlines to file comments and reply comments in the proceeding.

Ordering Clauses

4. Accordingly, *it is ordered* that, pursuant to section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), and § 1.46 of the Commission's rules, 47 CFR 1.46, that the Motion for Extension of Time filed by National EBS Association and the Catholic Television Network on June 13, 2008 is granted, and the time for filing comments in this proceeding is extended to September 22, 2008, and the time for filing reply comments in this proceeding is extended to October 22, 2008.

5. This action is taken under delegated authority pursuant to sections 0.131 and 0.331 of the Commission's rules, 47 CFR 0.131, 0.331.

Federal Communications Commission.

Joel D. Taubenblatt,

Deputy Chief, Wireless Telecommunications Bureau.

[FR Doc. E8–15445 Filed 7–7–08; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R2–ES–2008–0080; 92220–1113–0000; C6]

RIN 1018–AU97

Endangered and Threatened Wildlife and Plants; Proposed Removal of the Concho Water Snake (Nerodia paucimaculata) From the Federal List of Endangered and Threatened Wildlife; Removal of Federally Designated Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The best available scientific and commercial data indicate that the Concho water snake (*Nerodia paucimaculata*) has recovered. Therefore, 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 (delist) the Concho water snake (*Nerodia paucimaculata*) from the Federal List of Endangered and Threatened Wildlife, and accordingly, also remove its federally designated critical habitat. This determination is based on a thorough review of all available information, which indicates that the threats to this species have been eliminated or reduced to the point that the species has recovered and no longer meets the definition of threatened or endangered under the Act.

The Concho water snake is a reptile endemic to central Texas. It was listed as threatened on September 3, 1986, due to threats of habitat modification and destruction (51 FR 31412). Through implementation of recovery efforts, the Service has determined that this species has been recovered and no longer meets the definition of threatened or endangered.

DATES: Comments on the proposed rule must be received on or before September 8, 2008. Public hearing requests must be received by August 22, 2008.

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

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: 1018–AU97, Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

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 Field Office, 10711 Burnet Road, Suite 200, Austin, TX 78758; telephone 512/490–0057, extension 248; facsimile 512/490–0974. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800/877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

Our intent is to use the best available commercial and scientific data as the foundation for all endangered and threatened species classification decisions. Comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule to delist the (species name) are hereby solicited. Comments particularly are sought concerning:

(1) Any threat (or lack thereof) to the Concho water snake;

(2) Additional information on the range, distribution, and location of any additional populations of the Concho water snake;

(3) Information on habitat destruction and/or preservation for the Concho water snake;

(4) Current or planned activities in the species' habitat and the possible impacts to the Concho water snake;

(5) Data on population trends;

(6) Data on the status of Concho water snakes in reservoirs;

(7) Information regarding the sufficiency of planned flows in the Colorado River to maintain habitat for the Concho water snake;

(8) Data on the need for movement of Concho water snakes around large dams to maintain genetic diversity; and

(9) Information pertaining to the design of the required post delisting monitoring.

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. Please note that we may not consider comments we receive after the date specified in the **DATES** section in our final determination.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that we will post your entire comment—including your personal identifying information—on *http://www.regulations.gov.* 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.

In making a final decision on this proposal, we will take into consideration the comments and any additional information we receive. Such communications may lead to a final rule that differs from this proposal.

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 Austin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT** section).

Public Hearing

The Act provides for one or more public hearings on this proposal, if requested. Requests must be received by August 22, 2008. Such requests must be made in writing and addressed to the Field Supervisor (see **FOR FURTHER INFORMATION CONTACT** section).

Background

The Concho water snake is endemic to the Colorado and Concho Rivers in central Texas (Tennant 1984, p. 344; Scott *et al.* 1989, p. 373). It occurs on the Colorado River from E.V. Spence Reservoir to Colorado Bend State Park, including Ballinger Municipal Lake and O.H. Ivie Reservoir, and on the Concho River from the City of San Angelo to its confluence with the Colorado River at O.H. Ivie Reservoir. The Concho water snake can be found in rivers and streams, and on artificial shoreline habitat of the three reservoirs. Counties of known occurrence include Brown, Coke, Coleman, Concho, Lampasas, McCulloch, Mills, Runnels, San Saba, and Tom Green.

At the time of listing, there were considered to be two subspecies of *Nerodia harteri,* the Concho water snake (*N. h. paucimaculata*) and the Brazos water snake (*N. h. harteri*). Densmore *et al.* (1992, p. 66) determined the Concho water snake was a distinct species based, in part, on its geographic isolation and fixed differences in genetic markers. Therefore, in 1996 we changed the name in the Federal List from *N. h. paucimaculata* to *N. paucimaculata* (50 CFR 17.11) in accordance with Densmore *et al.* (1992). Information about the Concho water snake's biology and life history can be found in the final listing rule (51 FR 31412–1422), the Concho Water Snake Recovery Plan (Service 1993, pp. 4–5), Werner and Dixon (2000, pp. 209–216), and Campbell (2003).

In 1998, the Colorado River Municipal Water District (District) (1998, pp. 8–29) summarized 10 years of data collected on Concho water snake populations, status, and distribution. In 2004, the U.S. Geological Survey (USGS) analyzed capture-recapture data from 3 sources: (1) Mueller (1990, pp. 18–27); (2) Whiting (1993, Appendix 1); and (3) the 10 years of District data. However, for a number of reasons, primarily insufficient sampling effort at any single study site and a host of variables, especially environmental variability within a site and among sites, study results have not been robust enough to allow either population or trend estimates with satisfactory precision (Service 2004, p. 23). Additional information, particularly concerning the habitat requirements of the Concho water snake, is discussed under Summary of Factors Affecting the Species below.

The Concho water snake is characterized by being somewhat smaller than most other *Nerodia.* At maturity, males average about 15 inches (in) (38.1 centimeters (cm)) snout-vent length (SVL), and females average about 18 in (45.7 cm) SVL, with a maximum reported length of 42 in (106.7 cm) SVL. Hibernation begins in late October to late November, depending upon weather and temperatures (Williams 1969, p. 11). Most adults probably hibernate in the tunnels of small burrowing animals, particularly crayfish, while hibernating juveniles may be more common in the crevices under rocks on gravel bars (Werler and Dixon 2000, pp. 212, 214). Males reach sexual maturity at about 1 year of age but females produce their first litter at 2 or 3 years of age, depending on their reproductive development (Werler and Dixon 2000). The snakes emerge from mid-March to mid-April for the main mating event, which occurs during April and early May, with a lesser event in October (Greene *et al.* 1999, p. 702; Williams 1969, p. 11). Most births occur from late July through September (Dixon *et al.* 1988, p. 15; 1990, p. 13; 1991, pp. 30–31; 1992, p. 28; Greene *et al.* 1999, p. 702). Females produce litter sizes that range from 4 to 29, with a mean of about 11 neonate snakes (Greene *et al.* 1999).

Concho water snakes feed almost exclusively on fish (Williams 1969, pp. 9–10; Dixon *et al.* 1988, p. 16; 1989, p. 8; 1990, p. 36; 1992, p. 6; Greene *et al.* 1994, p. 167; Thornton 1990, p. 14), and have been observed feeding both during the day and at night. In riverine habitat and especially among neonates (recently born snakes), minnows (fish in the Cyprinidae family) are the primary food source. Concho water snakes may also opportunistically feed on frogs (*Rana* and *Acris* spp.) (Greene 1993, p. 20).

Previous Federal Action

We classified the Concho water snake as threatened on September 3, 1986 (51 FR 31412). The primary reasons for listing were extensive habitat loss and imminent threats to a large portion of its remaining population. Critical habitat was designated on June 29, 1989 (54 FR 27377). In September 1993, we finalized a recovery plan for the Concho water snake (Service 1993). In June 1998, we received a petition to delist the Concho water snake from the District. On August 2, 1999, we published a 90-day petition finding that the petitioner did not present substantial information indicating that delisting the species may be warranted (64 FR 41903).

Recovery

Section 4(f) of the Act directs us to develop and implement recovery plans for listed species unless the Director determines that such a plan will not benefit the conservation of the species. The Service completed the Concho Water Snake Recovery Plan in 1993. The Concho Water Snake Recovery Plan outlines recovery criteria to assist in determining when the snake has recovered to the point that the protections afforded by the Act are no longer needed (Service 1993, p. 33). These criteria are: (1) Adequate instream flows are assured even when the species is delisted. (2) Viable populations are present in each of the three major reaches (the Colorado River above Freese Dam, Colorado River below Freese Dam, and the Concho River). Here, population is defined as all Concho water snakes in a given area, in this case, each major river reach. (3)

Movement of an adequate number of Concho water snakes is assured to counteract the adverse impacts of population fragmentation. These movements should occur as long as Freese Dam is in place or until such time that the Service determines that Concho water snake populations in the three reaches are viable and ''artificial movement'' among them is not needed.

We used the recovery plan to provide guidance to the Service, State of Texas, and other partners on methods to minimize and reduce the threats to the Concho water snake and to provide measurable criteria that would be used to help determine when the threats to the Concho water snake had been reduced so that it could be removed from the Federal List of Endangered and Threatened Wildlife.

Recovery plans in general are not regulatory documents and are instead intended to provide a guide on how to achieve recovery. There are many paths to accomplishing recovery of a species in all or a significant portion of its range. The main goal is to remove the threats to a species, which may occur without meeting all recovery criteria contained in a recovery plan. 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 reduced sufficiently, and the species is robust enough, to reclassify the species from endangered to threatened or perhaps to delist the species. In other cases, recovery opportunities may be recognized that were not known at the time the recovery plan was finalized. Achievement of these opportunities may be counted as progress toward recovery in lieu of methods identified in the recovery plan. Likewise, we may learn information about the species 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 a species is a dynamic process requiring adaptive management. Judging 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.

For more information on recovery of the Concho water snake, see the recovery plan at *http://ecos.fws.gov/docs/recovery_plan/930927b.pdf*. We caution that research conducted since the recovery plan was completed in 1993 has modified our understanding of habitat requirement of the species.

A review of the best scientific and commercial data currently available (see Summary of Factors Affecting the Species section below) indicates that all three criteria in the Concho water snake recovery plan (adequate instream flows even after delisting, viable populations in each of the three major river reaches, and movement of snakes to assure adequate genetic mixing) have been met. Further, recovery of the Concho water snake has been a dynamic process, which has been furthered by the significant amount of new data collected on the biology and ecology of the species by numerous species experts. Since the time of listing and completion of the recovery plan, biologists have discovered that the snakes are able to persist and reproduce in the shorelines of reservoirs and that the snakes have managed to persist in all three population segments, surviving many years of drought. Based on this new information, the analysis below considers the best available data in determining that the Concho water snake may no longer meet the definition of a threatened or endangered species.

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, reclassifying, or removing species from listed status. ''Species'' is defined by the Act as including any species or subspecies of fish or wildlife or plants, and any distinct vertebrate population segment of fish or wildlife that interbreeds when mature (16 U.S.C. 1532(16)). Once the ''species'' is determined, we then evaluate whether that species may be endangered or threatened because of one or more of the five factors described in section 4(a)(1) of the Act. We must consider these same five factors in delisting a species. We may delist a species 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 (Concho water snake)); 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 following the 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 phrase ''significant portion of its range'' (SPR) 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 Concho water snake, should be considered threatened or endangered throughout all of its range. Then we will consider whether there are any portions of the Concho water snake's range in which it is in danger of extinction or likely to become endangered within the foreseeable future.

For the purposes of this proposed rule, we consider ''foreseeable future'' for the Concho water snake to be 20 years. This is a reasonable timeframe for analysis of factors identified that could affect the species in the future and as they relate to Concho water snake biology. The snakes become sexually mature at 2 or 3 years old and reproduce annually (Werner and Dixon 2000, p. 216), with a likely life span rarely exceeding 5 years (Greene *et al.* 1999, p. 707). A 20-year timeframe would encompass about 4 life spans and multiple generations. Twenty years or about four life spans and multiple generations is a reasonable duration for analysis of hydrologic conditions and expected responses by a short lived species such as the Concho water snake. Factors most likely affecting the populations relate to hydrologic cycles and stream flows. Texas water law requirements, including the District's permit (TCEQ permit #3676), requires minimum flows below Ivie Reservoir that are the same as those the Service found in our 2004 Biological Opinion were the minimum needed by the Concho water snake. In 2008 the Service entered into a Memorandum of Understanding (MOU) with the District to provide for the maintenance of minimum flow releases in perpetuity (see the Floodwater Scouring and Instream Flows section under Factor A for further discussion of the TCEQ permit and MOU). Therefore, we have no reason to believe that any significant changes are expected in the next 20 years in reservoir operations or other

factors that might affect stream conditions and snake populations.

The following analysis examines all five factors currently affecting, or that are likely to affect, the Concho water snake within the foreseeable future.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Habitat and Distribution

Concho water snakes are known to occur in rivers, streams, and along the artificial shoreline of reservoirs. These snakes are air-breathing; however, they feed almost exclusively on fish and are, therefore, found only near water sources capable of supporting at least a minimal fish population. Stream and river habitat used by the Concho water snake is primarily associated with riffles (Greene 1993, p. 96; Werler and Dixon 2000, p. 210; Forstner *et al.* 2006, p. 13), where the water is usually shallow and the current is of greater velocity than in the connecting pools. Riffles begin when an upper pool overflows at a change in gradient and forms rapids. The stream flows over rock rubble or solid to terraced bedrock substrate through a chute channel that is usually narrower than the streambed. The riffle ends when the rapids enter the next downstream pool. Riffles are believed to be the favored habitat for foraging, with young snakes using shallow parts of riffles and adult snakes using deeper parts of riffles (Greene 1993, pp. 13, 96; Scott *et al.* 1989, pp. 380–381; Williams 1969, p. 8; Werler and Dixon 2000, p. 215; Forstner *et al.* 2006, p. 13). Searches on the mainstream rivers (Concho and Colorado) also indicated Concho water snakes were found in the shallow pools between riffles (Williams 1969, p. 8). Dixon *et al.* (1989, p. 16) demonstrated that adult snakes used a variety of cover sites for resting, including exposed bedrock, thick herbaceous vegetation, debris piles, and crayfish burrows.

In the reservoirs, Concho water snake habitat is most likely shallow water with minimal wave action and rocks along the shoreline (Scott *et al.* 1989, pp. 379–380; Whiting 1993, p. 112). However, Concho water snakes have also been observed on steep shorelines and around boat houses (Scott *et al.* 1989, p. 379; Whiting 1993, p. 112). Unlike many other species of *Nerodia,* Concho water snakes do not seem to move far from water (Werler and Dixon 2000, p. 208). During Greene's (1993, p. 96) visual and radiotelemetry surveys, all snakes occurred within 33 feet (ft) (10 meters (m)) of water.

Adult and maturing Concho water snakes use a wider range of habitats than do juveniles (Scott *et al.* 1989, pp. 379–381; Werler and Dixon 2000, p. 211; Williams 1969, p. 8). In reservoirs and lakes, juvenile Concho water snakes are generally found in low-gradient, loose-rock shoals adjacent to silt-free cobble. In streams and rivers, juveniles are found in gravel shallows or riffles (Rose 1989, pp. 121–122; Scott *et al.* 1989, p. 379, Scott and Fitzgerald 1985, p. 35). This habitat is likely the best for juvenile snakes to successfully prey on small fish because the rocky shallows concentrate prey and are inaccessible to large predatory fish. The exposed rocky shoals act as thermal sinks, which may help keep the juvenile snakes warm and maintain a high growth rate (Scott *et al.* 1989, pp. 380–381).

Historically the Concho water snake was known to occur in spotty distribution on the mainstem of the Colorado River below E.V. Spence Reservoir near the City of Robert Lee downstream to the F.M. 45 bridge and then not again until further downstream near the City of Bend (Tinkle and Conant 1961, pp. 42–43; Williams 1969, p. 3). On the Concho River and its tributaries, Concho water snakes were historically known from Spring Creek, Dove Creek, and the South Concho River, all upstream of the Twin Buttes Reservoir, and on the mainstem of the Concho River downstream from San Angelo to the confluence with the Colorado River (Marr 1944, pp. 486–487; Tinkle and Conant 1961, pp. 42–43). By the time the Concho water snake was federally listed, it had been extirpated from the tributaries above the City of San Angelo (Flury and Maxwell 1981, p. 31), and surveys had never located snakes in lakes or reservoirs (Scott and Fitzgerald 1985, pp. 17, 34). At the time of listing, the range of the snake included O.C. Fisher, Twin Buttes, and Spence reservoirs and one tributary creek reservoir, Ballinger Municipal Lake. A fifth reservoir, O.H. Ivie (formerly known as Stacy), was already planned for construction at the confluence of the Concho and Colorado Rivers and was expected to reduce the range of Concho water snakes by more than 50 percent (Scott and Fitzgerald 1985, pp. 31, 35).

By 1993, Scott *et al.* (1989, pp. 382, 384), Thornton (1992, pp. 3–16), and Whiting (1993, pp.8, 28, 117–118, 121) determined the Concho water snake's distribution to be about 233 mi (375 km) (Service 1993, p. 9). Analysis for a 2004 amendment to the 1986 Biological Opinion (Service 2004, p. 32) summarized the known distribution of the Concho water snake to be the Colorado River from the confluence of Beals Creek (above Spence Reservoir), depending on reservoir stage, to downstream of Ivie Reservoir to Colorado Bend State Park, and on the Concho River downstream of the City of San Angelo to the confluence with the Colorado River. This is a total of about 280 mi (451 km) of river and about 40 mi (64 km) of reservoir shoreline. While the Concho water snake has been extirpated from some reaches of its historical distribution, mainly upstream of San Angelo (Flury and Maxwell 1981, p. 31), since the time of listing it has been confirmed farther downstream from Ivie Reservoir and upstream from Spence Reservoir (Scott *et al.* 1989, p. 384; and Dixon *et al.* 1988, p. 12; 1990, pp. 50, 62–65; 1991, pp. 60–67; 1992, pp. 84, 87, 96–97).

In 2004 and 2005, Drs. Forstner and Dixon surveyed for Concho water snakes across the species' range. One goal of Forstner *et al.* (2006, pp. 4–5) was to evaluate whether viable Concho water snake populations existed in all three reaches of the Colorado and Concho rivers separated by Ivie Reservoir. To do this, snake localities were surveyed ''for evidence of reproduction (one measure of sustainability).'' Persistence and reproduction were documented in the Concho River and upstream of Ivie Reservoir in the Colorado River. However, access below Ivie Reservoir was restricted by private property owners, preventing an intense assessment downstream of the impoundment. Regardless of limited access, females that exhibited signs of recently giving birth were collected from accessible areas, which Forstner *et al.* (2006, p. 18) considered technically sufficient to demonstrate persistence and reproduction downstream of Ivie Reservior. ''Even in the face of landscape scale or ecosystem wide stresses by severely reduced precipitation, increased human uses of instream flows, introduced species, and ever increasing human densities, the Concho water snake remains in the majority of the sites visited and continues to reproduce at those locations (Forstner *et al.* 2006, p. 18).'' Forstner *et al.* (2006, pp. 16–18, 20) state that ''self sustain[ed], seemingly viable populations in the Concho and Colorado Rivers at the end of a decade of monitoring'' occur in the three reaches of the snake's range.

Reservoir Inundation

At the time of listing, we believed the construction of Ivie Reservoir would have two major impacts that would result in loss of Concho water snake

habitat: (1) above the dam, the rocky shoreline and riffle habitat would be inundated, and (2) below the dam, normal water flow would be curtailed, and floodwater scouring would be prevented (see the Floodwater Scouring and Instream Flows section below for discussion of below-dam effects). At that time, the Colorado River at the proposed Ivie Reservoir site was believed to support the highest concentration of Concho water snakes (Flurry and Maxwell 1981, pp. 36, 48; 51 FR 31419). Outside of this area, the snake had been found only in isolated occurrences, which indicated a disjunct, fragmented distribution. The snake had not been collected in reservoirs or in the silted in riverine habitat below Spence Reservoir (Scott and Fitzgerald 1985, pp. 13, 28). It also had not been found in perennial tributaries except Elm Creek near Ballinger (Scott and Fitzgerald 1985, pp. 15, 34). Thus, we believed the inundation of the Ivie Reservoir would result in a substantial loss of habitat for the Concho water snake.

As a result of a 1986 formal consultation conducted under section 7 of the Act with the U.S. Army Corps of Engineers (USACE) on construction of Freese Dam to form Ivie Reservoir (1986 Biological Opinion), the District agreed to implement conservation measures that included, but were not limited to: Long-term monitoring of the snakes, completing life-history studies, maintaining specific flow regimes from Spence and Ivie reservoirs, creating six artificial riffles below Spence, and transplanting snakes between populations above and below Ivie Reservoir (Service 1986, pp. 12–24).

As part of their long-term monitoring plan, District field biologists conducted extensive searches for the Concho water snake beginning in 1987. According to Dixon *et al.* (1988, p. 12; 1990, pp. 50, 62–65; 1991, pp. 60–67; 1992, pp. 84, 87, 96–97), snakes have now been documented within and above Spence Reservoir, downstream of Spence Reservoir in the artificial riffles, at Ballinger Municipal Lake, the old Ballinger Lake, and the connecting channel between the two Ballinger lakes. The snake has also been documented in multiple locations on Elm Creek and two of its tributaries, Bluff Creek and Coyote Creek (Scott and Fitzgerald 1985, pp.14–15, 30; and Scott *et al.* 1989, p. 384).

Additionally, during the District's 10-year monitoring effort (1987–1997), snakes were regularly found in Spence, Ivie, and Lake Ballinger Reservoirs, a habitat type they were not known to occupy at the time of listing. Concho water snakes have continued to be found in reservoirs. Dixon's (2004, pp. 3–4) surveys in 2004 confirmed that snakes persist in Spence and Ivie Reservoirs, and, while Ballinger Lake had only a small pool of water (2 feet or less) in 2004 and no snakes were found, after rains in 2005 Forstner *et al.* (2006, p. 12) confirmed snake presence and reproductive activity within the lake. Whiting (1993, p. 17) stated that rocky shorelines were the single most important component of snake habitat in reservoirs, and that changes in water surface elevation of Spence Reservoir affect the availability of that shoreline habitat (Whiting 1993, p. 13). In discussing Spence Reservoir, Forstner *et al.* (2006, p. 17) states that, ''there are rocky outcrops, boulder slopes, in limited areas that have been occupied by the snake and the populations have remained there over the past decade.''

Because Concho water snakes are now known to be reproducing and persisting in lakes and reservoirs and their current distribution is larger than reported at the time of listing and historically, habitat loss from reservoir inundation is no longer believed to be a significant threat to the long-term survival of the species.

Drought

In severe drought, as the region has experienced over the last 15 years (TWDB 2006, 1–60, 1–67), the linear extent of dewatered riverine habitats could be large and the length of time without flows could extend for several months or more (Service 2004, p. 51). Decreased flow will likely reduce the amount of available shallow rocky habitats in much of the river. However, Concho water snakes appear able to survive these low flow periods. For example, Elm Creek had experienced a number of extended no flow periods over the 5 years prior to 2004 and then flooded in August 2004. In September 2004, Dixon (2004, p. 11) noted Concho water snakes inhabited the site. Dixon (2004, p. 12) surmised that snakes either moved from the mouth of Elm Creek at the Colorado River (a distance of 4.6 creek mi (7.4 creek km)), or existed in deep pools somewhere within a returnable distance to the site. Another example of snake persistence during dry times was the drying of Ballinger Lake in 2004 and confirmation of reproductive snakes in the lake in 2005 following rains (Dixon 2004, p. 4; Forstner *et al.* 2006, p. 15).

According to Dixon (2004, p. 9), during long periods of drought, the low-head dams (small private dams, a few feet tall, that create pools upstream and riffle-like areas downstream) within both the Concho and Colorado Rivers form pools that can extend two-thirds of a mile (1 km) or more up river (depending on dam height). The riffles and pools that lie upstream of these low-head dams may not completely dry up because of small springs and creeks nearby. These pools act as refuges for juvenile and adult Concho water snakes when flow ceases (Dixon 2004, p. 9). Concho water snakes have been located in pools behind low-head dams along the Colorado River, and Dixon (2004, p. 9) states that it is reasonable to expect the small pools behind low-head dams on the Concho River act in the same way. Even with the drought, water continues to flow over bedrock in some areas, and snakes have been observed foraging for fish in the diminished flow. The extent of solid bedrock in some of the riffle systems tends to maintain the nature of the riffle and does not allow vegetation to root and collect debris and silt (Dixon 2004, p. 9).

Another way the snakes may endure drying conditions is to use deep burrows. Greene (1993, pp. 89, 94) found Concho water snake hibernacula (shelters for hibernating snakes) within 19.7 ft (6 m) of water with a mean depth of 1.7 ft (0.52 m). Hibernacula types included crayfish burrows, rock ledges, debris piles, and concrete low water crossings for adults and loose embankments of rock and soil for juveniles. Dixon (2006, p. 2) stated that during droughts the snakes were possibly in the crayfish burrows, since they may retain moisture.

Even in light of the ongoing regional drought (TWDB 2006, pp. 1–60, 1–67), USGS stream gauges have registered four flood events greater than 400 cubic feet per second (cfs) below Spence Reservoir and six flood events greater than 1,000 cfs below Ivie Reservoir over the last 10 years. While both Dixon (2004, pp. 8–9) and Forstner *et al.* (2006, pp. 12, 15) document degradation of riffles from siltation, there are still numerous riffles continuing to support Concho water snakes (Dixon 2004, pp. 5–8).

The Concho water snake has evolved and adapted for thousands of years through many documented long-term droughts (Forstner *et al.* 2006, pp. 17–19). Forstner *et al.* (2006, pp. 16, 20) state that ''the impacts and future stressors on this taxon by anthropogenic and natural cycles are inevitable,'' and ''the snake has persisted in an environment for the past several millennia that has seen frighteningly intense periods of drought.'' Additionally, while there have never been minimum flows required for the Concho River below San Angelo, there

are several smaller dams ''up and down the Concho River, [which] act as refugia for Concho water snakes (Dixon 2004, p. 4).'' Therefore, because the snakes have survived under long-term drought and low-flow conditions (Forstner *et al.* 2006, p. 22), we believe that the threat from drought is not likely to endanger the Concho water snake in the foreseeable future.

Floodwater Scouring and Instream Flows

As discussed above, at the time of listing, we believed the construction of Ivie Reservoir would curtail normal water flow and prevent floodwater scouring. Without such flooding, riffle habitat is lost as the rocky streambed becomes covered with silt. In their recent survey of the Concho water snake and its habitat, Forstner *et al.* (2006, pp. 14, 16) found that the lack of flushing flows has allowed silt to settle and cover many of the riffles at historically occupied sites and that several sites have changed from riffles to slow-flowing sandy sections of river, reducing habitat available to these snakes. Sand and silt fill in graveled cobble substrate and provide areas for growth of salt cedar and other vegetation, which further eliminates the rocky-bottomed riffle areas required by Concho water snakes (51 FR 31419; Scott and Fitzgerald 1985, p. 13; Forstner *et al.* 2006, p. 15). However, despite some riffle habitat loss and the presence of other system stressors, Forstner *et al.* (2006, p. 18) noted that the Concho water snake persisted and continued to reproduce at the majority of the sites they visited. Thus, we believe that the loss of some riffle habitat does not threaten the Concho water snake.

Since issuance of the 1986 Biological Opinion and associated minimum flow requirements, stream flows throughout the range of the Concho water snake have declined considerably (Forstner *et al.* 2006, pp. 13–16). According to the Regional Water Plan for Region F of the Texas Water Development Board (TWDB 2006, p. 1–6), ranching, irrigated agriculture, and the oil and gas industry have historically dominated the regional economy. The largest water user, about 66 percent of the total demand, is irrigated agriculture (provided mostly by groundwater pumping), and municipal is the next largest water user at almost 22 percent (provided mostly by surface water reservoirs) (TWDB 2006, pp. 1–19, 1–24). Based on an analysis of USGS stream gauges (Service 2004, p. 36), low flows in the rivers in recent years have been exacerbated by low annual rainfall totals throughout the watershed. Stream flows during 1999 to 2003 were substantially lower than the period of record for seven USGS stream gauges analyzed on the Colorado and Concho rivers. Recent flows on the Concho River, where minimum flows have not been required, have been particularly low. Prior to reservoir construction near the City of San Angelo, median annual flow on the Concho River at the San Angelo and Paint Rock gauges was 32 and 26 cfs, respectively, but declined to a median annual flow of 0.2 and 0.1 cfs, respectively, from 1999 to 2003. Discharges on the Colorado River have not ceased since 1986 due partly to minimum flows required by the 1986 Biological Opinion on construction of Ivie Reservoir. However, median annual discharge prior to construction of Ivie Reservoir was 71 cfs and declined to 9 cfs between 1999 and 2003 (Service 2004, pp. 36–37).

In July 2004, the USACE reinitiated formal consultation (Consultation Number 2–15–F–2004–0242) with the Service on the District's activities. Prior to completing the consultation, the District indicated through a letter (2004, pp. 1–2), and the USACE concurred via e-mail (2004, p. 1), that an emergency situation existed due to a limited water supply endangering public health and safety to their municipal customers (450,000 people). The ongoing drought and implementation of the conditions in the 1986 Biological Opinion were given as the basis for this emergency. During the emergency, the District was allowed to cease releasing minimum flows, while formal consultation was ongoing. An amended biological opinion (2004 Biological Opinion) was completed in December 2004. Shortly thereafter, the District and the USACE determined the emergency had ended and the requirements of the amended Biological Opinion went into effect (Service 2004, pp. 1, 3). The main component of the 2004 Biological Opinion was a reduction in minimum flow requirements (Service 2004, pp. 11–12). The new flow requirements included, to the extent there is inflow into Spence Reservoir, that the District will maintain a minimum flow in the Colorado River downstream of not less than 4.0 cfs (0.11 cms) during April through September and 1.5 cfs (0.04 cms) during the months of October through March.

While the reduced minimum flows outlined in the 2004 Biological Opinion will have an impact on the aquatic habitat conditions in the Colorado River, those impacts will be ameliorated to some degree by the nature of the intervening watersheds that drain each of these stream segments, since both the Colorado and Concho rivers are gaining streams (Service 2004, pp. 50–51). Gaining streams gather water as you progress downstream. This gathering of water is exhibited not only by tributary inflow but also as bank discharge from spring flow that occurs where shallow aquifers interface with the stream. This gaining stream phenomenon is greatly controlled by ambient weather conditions. During periods of long-term drought, the tributaries and springs will cease flowing; however, during normal rainfall periods, these sources of water help to restore and maintain more stable instream flows in the mainstem (Service 2004, p. 50). Additionally, even when releases from dams have ceased, normal seepage from a dam occurs and provides for the formation of pools (large and small) that can provide habitat for the Concho water snake and the fish it preys upon for varying periods of time depending on ambient weather conditions. When dam releases are resumed, the pools (located below dams and up and downstream from spring areas) that may have served as refugial habitat are reconnected by flowing water.

If the Concho water snake is delisted, the minimum flow requirements required by the 2004 Biological Opinion will no longer apply. However, in February 2008 the Service entered into a MOU with the District to provide for the maintenance of these minimum flow releases in perpetuity. The purpose of the MOU is for the District to provide assurance that minimum reservoir releases will continue in perpetuity, consistent with the 2004 BO (Service, 2004, pp. 11–12). The releases will be maintained, to the extent there is inflow, if the Concho water snake is removed from the Federal list of threatened species. While this means the District has the authority to further reduce or even terminate flows during times of extremely low inflow, earlier analysis using 10 years of historical data indicated that, based on studies that demonstrate persistence of the snake in the past, such low flows occurring only occasionally and temporarily should not affect the snake's long-term status.

The District has implemented every activity requested by the Service in previous biological opinions beginning in 1986. The minimum flows required in the 2004 Biological Opinion have been implemented by the District and those flow requirements were duplicated in the 2008 MOU signed by the District. The District has an excellent track record of carrying out conservation actions to benefit the Concho water snake (Freese and Nichols 2006, Service pp. 42–47). The Service is

confident in the District's commitment and ability to carry out the provisions of the 2008 MOU to provide for minimum flows. Even in the absence of the MOU flow requirements, minimal amounts of water and stream flows will still be present at various times of the year in the gaining reaches of the Colorado River and below Spence and Ivie Reservoirs due to: dam leakage/seepage, inflow from creeks and other drainages, and spring activity.

In addition to the MOU, and the 2004 Biological Opinion, Texas water law requirements also result in maintenance of instream flow. Texas observes traditional appropriative water rights, which is also known as the ''first in time, first in right'' rule (See Texas Water Code § 11.027). The state's water policy requires the Texas Commission on Environmental Quality (TCEQ) to set, to the extent practicable, minimum instream flows to protect the state's water quality when issuing water rights permits (See Texas Water Code § 11.0235(c)). Furthermore, Texas water law prohibits the owner of stored water from interfering with water rights holders downstream or releasing water that will degrade the water flowing through the stream or stored downstream (Texas Water Code § 297.93).

The District's water rights permit (TCEQ permit #3676) requires the District to maintain flows below Ivie Reservoir of 8 cfs from April through September and 2.5 cfs from October through March. Flows must be maintained below both Spence and Ivie reservoirs to ensure water quality and provide for downstream water rights. Flows are mandated and releases from Spence Reservoir are periodically required by the State of Texas to ensure the quality of water entering Ivie Reservoir. Spence Reservoir is known to be high in dissolved solids and chlorides (Service 2004, p. 6), so if flows into Spence Reservoir are low, water quality in the reservoir can become degraded unless flushing flows are released. The District must also ensure that senior water right holders are delivered specific amounts of water from Ivie Reservoir. Therefore, long-term low flow releases or no releases from Spence and Ivie Reservoirs are rare.

The District has been able to maintain flows from both Spence and Ivie reservoirs over the long term as evidenced by long-term measures of flows at two gages. Daily median flows in the reach of the Colorado River below Spence Reservoir (as measured at USGS near Ballinger since Spence Reservoir was constructed, 1969–2007) exceeded 4.0 cfs in the summer (April through September) all but 12 days. During the winter (October through March), daily median flows always exceeded 1.5 cfs. Daily median flows in the reach of the Colorado River below Ivie Reservoir (as measured at USGS at Winchell since Ivie Reservoir was constructed, 1990–2007) exceeded 8.0 cfs in the summer (April through September) all but 15 days. During the winter (October through March), daily median flows always exceeded 2.5 cfs. We believe that the District will continue to maintain instream flows in the foreseeable future.

While instream flows have decreased, Concho water snakes have continued to be found throughout their range. In addition, as discussed above in the Drought section, Concho water snakes appear to be able to survive low flow situations. Therefore, because the snakes have survived under low-flow conditions, and because some minimal flows will persist throughout parts of the snake's range (Forstner *et al.* 2006, p. 22) due to natural inflows and dam releases by the District, we believe that the Concho water snake is not threatened due to lack of instream flows in the foreseeable future.

Vegetation Encroachment

Salt cedar (Tamarisk sp.) is a nonnative species that was introduced to the United States in the 1800s from southern Europe or the eastern Mediterranean region (DiTomaso 1998, p. 326). In the watersheds of the Spence and Ivie Reservoirs, these plants are abundant and have been reported to have greatly affected water quality and quantity because they consume large volumes of water and then transport salts from the water to the surfaces of their leaves. When the leaves are dropped in the fall, the salt is concentrated at the soil surface (Freese and Nichols 2006, p. 5.5; DiTomaso 1998, p. 334).

In an effort to increase water yield and reduce salt concentrations in Spence and Ivie reservoirs, the District, in cooperation with the Texas Cooperative Extension, the Texas Department of Agriculture, the U.S. Department of Agriculture—Agricultural Research Service, and the Texas State Soil and Water Conservation Board (TSSWCB), has initiated a salt cedar control project in the Upper Colorado River Basin, which includes spraying an herbicide to eradicate mass concentrations of salt cedar and then using a leaf beetle for biological control of new plant growth (Freese and Nichols 2006, p. 6.4). This project ''is an excellent first step in the recovery of the Upper Colorado River Basin back to many of its [pre-infestation] functions, including native riparian habitat for wildlife and improved habitat for fish and other aquatic organisms,'' and is ''one of the most crucial options for improving water quality and quantity'' (Freese and Nichols 2006, pp. 6.5–6.6). We have no information that the herbicide poses a direct poisoning threat to the Concho water snake.

Additionally, control programs for invasive brush species, such as juniper (*Juniperus* sp.) and mesquite (*Prosopis* sp.), are also being implemented in the Concho and Upper Colorado River basins to increase water quantity (Freese and Nichols 2006, p. 6.6; TSSWCB 2004, pp. 2–3). The TSSWCB is currently focusing above O.C. Fisher and Twin Buttes reservoirs on the Concho River and to date over 175,000 acres (70,820 hectares) of invasive brush have been treated in these watersheds (TSSWCB 2004, pp. 2–3). The removal and control of salt cedar and other invasive brush from the riparian reaches of the Colorado and Concho rivers helps augment existing stream discharge and also reduces buildup of dissolved solids (salts) in the soils of the riparian zone (Service 2004, p. 56). Additionally, this removal encourages reformation of riffle areas, increases stream flow, and reduces sediment deposition, which improves instream habitat for the Concho water snake and other aquatic species (Freese and Nichols 2006, p. 6.6).

Fragmentation

At the time of listing, we believed construction of Ivie Reservoir (formed by Freese Dam) would likely segment Concho water snakes into three separate populations and thereby reduce genetic exchange (Scott and Fitzgerald 1985, p. 34). Prior to the snake's listing in 1986, no researchers had documented Concho water snakes traveling over land to circumvent the barriers caused by large dams, and snakes had not been located in reservoirs. Due to this separation, a reasonable and prudent measure in the 1986 Biological Opinion was to transfer snakes annually between the populations separated by the dam. Snakes were transferred in 1995 and again in 2006 (District 1995, p. 1; District 2006, pp. 1–3).

Because we now know Ivie Reservoir, which receives flow from both the Concho and Colorado Rivers, to be occupied, we believe it is reasonable to surmise that snakes are capable of genetic interchange between the Concho and Colorado Rivers via the reservoirs' shorelines. The District (1998, p. 14) summarized Concho water snake habitat within Ivie Reservoir and found that

although the habitat is not linearly consistent, it does occur throughout the reservoir. Female Concho water snakes produce their first young at 2 or 3 years of age (Werler and Dixon 2000, p. 216). Based on occupancy of reservoirs and moderate generation time, we have a high level of confidence that gene flow occurs between populations.

In recent surveys, Forstner *et al.* 2006 (pp. 10–13, 18) found that Concho water snakes were reproducing in the Concho and Colorado Rivers above Ivie Reservoir and in the Colorado River below it; they concluded that the populations in those three river reaches were self sustaining and seemingly viable (Forstner *et al.* 2006, pp. 16–18, 20). The 2008 MOU (mentioned above), Article 4.1 also provides that, in the springtime, the District, in coordination with the Service, should move 5 male snakes from below Spence and Freese dams to above these dams, once every 3 years. Moving snakes will be dependent upon availability of funding for the District. We believe this movement will benefit the snake by enhancing genetic exchange between the three populations. Should funding be unavailable in any particular snake-moving year, every effort will be made to move snakes in the succeeding year. Based on the available data, we do not believe the species is likely to become threatened or endangered in the foreseeable future due to genetic isolation.

Pollution and Water Quality

At the time of listing, we believed buildup of algae in riffle areas reduced oxygen and nutrients available to populations of fish, the Concho water snake's primary food (51 FR 31419). We were also concerned that the inflow of nutrients into the Concho River in the San Angelo area, along with reduced dilution capability associated with lower flows, created large concentrations of algae in portions of the river (51 FR 31419). A summary of the 1987–1996 fish collections in the Colorado and Concho Rivers, included in the Service's 2004 Biological Opinion (Appendix A, pp. 68–69), suggested that fish populations have persisted despite the presence of algae. Also, no impacts to snakes have been observed or documented as a result of water quality conditions during the ongoing drought (Service 2004, p. 52). Additionally, according to Dixon (2006, p. 2), Concho water snakes have been documented to survive in captivity for as long as 12 months with a reduced food supply. Therefore, we no longer consider algal growth and nutrient enrichment to be significant threats to the snake's survival.

The Concho water snake was listed as endangered by the State of Texas in 1984. In 2000, it was removed from the State's list of threatened species (TPWD 2000, p. 3) because TPWD no longer considered it likely to become endangered (64 FR 41903).

The Texas State Legislature implemented the Texas Clean Rivers program in 1991. The District has actively participated in the program since that time and monitors surface water quality in the upper Colorado River basin, which includes the distribution of the Concho water snake above Freese Dam. The Lower Colorado River Authority (LCRA) has the responsibility for water quality monitoring below Freese Dam. Both of these entities have participated in the Clean Rivers Program since 1991 and have provided a proactive response for ensuring a high level of surface water quality in the Colorado River and its mainstem reservoirs. These programs are ongoing and designed to ensure water quality integrity for all aquatic resources, including the Concho water snake and fish, its primary food source, in the upper basin. As water quality problems are detected, swift responses by the District and LCRA to effect corrective actions through State of Texas regulatory agencies (TCEQ and the Texas Railroad Commission) are completed (Service 2004, pp. 52–53).

Additional water quality protections for Concho water snakes in riverine and reservoir habitats will continue indirectly under the Clean Water Act (CWA). According to the Environmental Protection Agency (2006, p. 1), the CWA establishes basic structures for regulating discharges of pollutants into United States waters, protecting water quality for species dependent on rivers and streams for their survival.

According to species experts, minimally maintained, ''mandated flows below Ivie Reservoir (TCEQ permit #3676) [and] senior water rights below both Spence and Ivie reservoirs'' will adequately provide instream flows for the Concho water snake (Forstner *et al.* 2006, p 21), preventing the snake from likely becoming threatened or endangered in the foreseeable future because the snake has persisted under these conditions historically, including the ongoing drought, as discussed earlier in this proposal.

Forage Fish Availabilty

At the time of listing, we believed that declining flows, inundation, pollution, and other habitat threats would have adverse impacts on riffle-dwelling fish, the principal food of the Concho water snake (Williams 1969, pp. 9–10; Dixon *et al.* 1988, p. 16; 1989, p. 8; 1990, p. 36; 1992, p. 6; Greene *et al.* 1994, p. 167; Thornton 1990, p. 14). While we do not know the full extent of the drought's effects on the local fish populations, we do have information that indicates the snake is able to survive in captivity for up to 12 months with a reduced food supply (Dixon 2006, p. 2), and based on the snake's persistence and reproduction within all three reaches (Forstner *et al.* 2006, pp. 10–13, 18), we believe that the Concho water snake is no longer threatened with endangerment in the foreseeable future as a result of potential threats to local food fish populations.

Factor A Summary

In conclusion, over the course of 20 years, including the construction of three dams that were anticipated to fragment the distribution of the Concho water snake, a prolonged drought accompanied by extreme low water flows in parts of the snake's range, and concerns about heavy nutrient inflows, surveys have confirmed that the snakes have occupied habitat along the new lakeshores, survived in or quickly reoccupied areas of extreme low flows, and have not been adversely affected by nutrient-related effects. Additionally, habitat restoration efforts such as the removal of salt cedar and other brushy species may be improving instream habitat for the Concho water snake and other aquatic species. We believe that destruction, modification, or curtailment of the Concho water snake habitat or range due to habitat loss, altered instream flows and floodwater scouring, drought, vegetation encroachment, fragmentation, and pollution no longer threaten the Concho water snake with becoming endangered.

Forstner (2006 p. 12) cites Soule's 1987 definition that describes the key criteria for a viable population to include the ability of the population to be self sustaining, able to persist over time (a century or longer for the Concho water snake), and the ability to adapt to local conditions and evolutionary pressures. Forstner stated that the criteria of self sustaining, seemingly viable populations in the Concho and Colorado rivers at the end of a decade of monitoring have been met. Recalling the three recovery criteria from the 1993 Concho Water Snake Recovery Plan: Adequate instream flows, viable populations in each of the three major reaches (as indicated by not only the repeated presence of snakes at long-term monitoring sites, but by documented evidence of reproduction as a measure

of sustainability), and movement of water snakes to counteract population fragmentation. Forstner's 2006 Final Survey Assessment Report (May 18, 2006 p. 12) concludes that his assessment indicates that two out of three of the criteria have been met. Fortner (2006 p. 13) then states that his assessment did not address the final instream flow criterion, yet concludes that ''in addition to the mandated flows below Ivie Reservoir (TCEQ permit #3676), senior water rights below both Spence and Ivie Reservoirs virtually assure maintenance of instream flows simply as a consequence of meeting those water right demands. The assurance of the instream flow criterion can be met without ever considering the flows agreed to by the District in the 2008 MOU. The Service realizes that severe environmental conditions that reduced reservoir releases and instream flow have occurred in the past and will occur in the future, and we are confident that the District will continue to implement all appropriate conservation actions, including providing the flows outlined in the 2008 MOU. Furthermore, we believe that the District will continue to comply with its TCEQ water rights permit, which mandates flow releases from Ivie Reservoir. Since the listing of the Concho water snake in 1986, the District has an impeccable track record of providing flows, moving snakes, and facilitating/conducting research and monitoring to conserve the species.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

At the time of listing, Concho water snakes were known to sometimes be captured or killed by recreationists (51 FR 31420). The effect of this activity on Concho water snake populations was and still is believed to be minimal. However, instances of Concho and Brazos water snakes being killed have been reported in both populated and unpopulated areas. For example, Brazos water snakes have been crushed under stones at the water's edge by people walking on the banks and shot by small caliber firearms, and fishermen have commented on their success in removing the ''water moccasins'' from the river (Forstner *et al.* 2006, pp. 18–19). At one of the historically most productive localities for Brazos water snakes (a closely related species occurring in an adjacent drainage), Forstner *et al.* (2006, p. 18) found no snakes in 2 years of searching. They noted dozens to hundreds of campers at the site each year. According to Dixon (2006, p. 2), there is not as much recreation occurring on the Concho and Colorado Rivers, where the Concho water snake occurs, as there is on the Brazos River. We are unaware of any plans to increase recreational opportunities in the Colorado and Concho Rivers to increase recreational use. Therefore, we believe that impacts from recreationists will continue to be less in the foreseeable future in the areas occupied by Concho water snakes.

While some limited killing of snakes is likely still occurring, there is no evidence indicating that these mortalities are affecting the species on a rangewide or population level. Therefore, we find that mortality from this factor is not likely to cause the species to become threatened or endangered in the foreseeable future.

C. Disease or Predation

At the time of listing, no problems of disease or predation on Concho water snakes were known to exist (51 FR 31420). While currently no disease problems are known, predators on Concho water snakes have been identified. As is true for most snakes, predation is considered a major natural source of mortality for Concho water snakes (Werler and Dixon 2000, p. 215). Predators documented to prey on Concho water snakes include kingsnakes (*Lampropeltis getula*), coachwhip snakes (*Masticophis flagellum*), racers (*Coluber constrictor*), raccoons (*Procyon lotor*), and great blue herons (*Ardea herodias*) (Greene 1993, p. 102; Dixon *et al.* 1988, p. 18; Williams 1969, p. 15). Raptors such as hawks (*Buteo spp.*) and falcons (*Falco sp p.*) are also known to predate upon snakes (Steenhof and Kochert 1988, p. 42). Predatory fish include bass (*Micropterus salmoides*) and channel catfish (*Ictaclurus punctatus*) (McGrew 1963, pp. 178–179; Jordan and Arrington 2001, 158). Predation of Concho water snakes clearly is occurring; however, all of these predators are native to this region and the snakes have persisted in the face of such predation both historically and during the last 20 years during periods of dam construction and drought. Thus, we believe that mortality from predation is not likely to cause them to become threatened or endangered in the foreseeable future.

D. The Inadequacy of Existing Regulatory Mechanisms

Due to the Texas Clean Rivers program, other Texas water law requirements, and the 2008 MOU between the Fish and Wildlife Service and the ASACE, both discussed earlier under Factor A, we believe that inadequacy of existing regulatory mechanisms does not constitute an ongoing threat to the Concho water snake.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

We are unaware of any other natural or manmade factors affecting the continued existence of the Concho water snake at this time.

Conclusion of the Five-Factor Analysis

As required by the Act, we considered the five potential threat factors to assess whether the Concho water snake is threatened or endangered throughout all or a significant portion 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 they are at such a large scale that they place the entire species in danger of extinction, we would list the entire species.

Since the time of listing, it has been shown that: (1) Concho water snakes can survive lower flows than previously thought necessary for their survival; (2) mandated flows, downstream senior water rights, and the 2008 MOU between the District and the Service virtually assure maintenance of adequate instream flows; (3) viable populations of Concho water snakes exist in all three reaches of the species' range; (4) the snake uses the shoreline of reservoirs; (5) snakes may not need to be transferred between populations in order to prevent genetic isolation, although the 2008 MOU provides for them to be moved; and (6) it persists, reproduces, and remains viable throughout its range. In addition, the removal of salt cedar and other invasive brushy species is restoring riparian habitat, small riffles, and water quality for the Concho water snake.

Application of the Results of the Five Factor Analysis to the Recovery Plan's Criteria

The 1993 Recovery Plan described maintenance of adequate instream flows (Recovery Criterion 1) to maintain both the quantity and quality of Concho water snake habitat so that occupied habitat would continue to support viable populations of the species. At the time the recovery plan was completed, adequate instream flow rates were based on the constituent elements identified in the 1989 critical habitat designation (54 FR 27382) and the reasonable and prudent alternatives identified in the

1986 Biological Opinion for the construction of O.H. Ivie Reservior. However, those requirements changed as the following new information became available:

(1) Lower flow rates support the snake population;

(2) Information on the snake's habitat indicates that they are more of a generalist and do not depend on the previously accepted narrow habitat requirements; and

(3) Adequate flow to maintain the snake's habitat and the snake population is provided by a variety of sources in addition to the flow required by the 2004 Biological Opinion (and subsequently required in a 2008 Memorandum of Understanding (MOU)).

As discussed above, in 2004, we revised the biological opinion and determined that lower flow rates were adequate to support riverine habitat for the snake. This was based on new information from numerous studies funded by the District in the 1990s that greatly added to our knowledge of the biology of the snake and its habitat. Monitoring of the snake population indicated that the population was sustained by the lesser flows required in the 2004 Biological Opinion (Forstner 2006, p. 12).

It is now known that the Concho water snake is more of a habitat opportunist than originally believed (Dixon 2004). In addition to riverine habitat, the snake is known to use areas above and below low head dams, pools created by the dams, man-made lakes, naturally occurring pools in the river, and tributaries, as Concho water snake has been found in Elm Creek and two of its tributaries. Further analysis by Forstner *et al.* (2006, p. 16) concluded that Concho water snakes can survive in habitats with lower flows than previously thought.

While riverine habitat is important for the conservation of the snake, the need to maintain continuous flows at levels previously required were determined to no longer be necessary to provide adequate habitat for snakes. The flows described in the Recovery Plan and the specific flows included in the 1989 critical habitat designation were based on the best scientific information at that time; however, subsequent information provided by Forstner, Dixon, and Thornton indicated that the snake survived, reproduced, and maintained population viability with less stream flow. In response to that new information, the Service required lower stream flows in the 2004 Biological Opinion and based that decision on the continued population viability of the water snake (including snake abundance and reproductive success). This was further confirmed by the Fortner *et al.* 2006 report.

In order to maintain riverine habitats in the Colorado River, we entered into a MOU in 2008 to ensure that the District will operate Colorado River reservoirs to provide adequate instream flows if the species were delisted, consistent with the 2004 Biological Opinion (see Factor A section above for more information).

In addition to the MOU, the District also maintains flows below Spence and Ivie reservoirs to ensure water quality and provide for downstream water rights. Flows are mandated and releases from Spence Reservoir are periodically required by the State of Texas to ensure the quality of water entering Ivie Reservoir. Spence Reservoir is known to be high in dissolved solids and chlorides (Service 2004, p. 6), which results in period releases of water from Spence Reservoir to maintain its water quality. The District must also ensure that senior water right holders are delivered specific amounts of water from Ivie Reservoir. Therefore, long term low flow releases or no releases from Spence and Ivie Reservoirs are not common practices unless an emergency situation occurs.

The Recovery Plan also required maintaining viable populations of the snake (Recovery Criterion 2). Forstner *et al.* (2006, pp. 18, 20) reviewed the past population data collected on the snake as well as conducted field surveys in 2005 and 2006. Based on the snakes' persistence and reproduction throughout its range Forstner *et al.* (2006, pp. 18, 20) concluded that seemingly viable populations of Concho water snakes exist in all three reaches of the species' range. A re-analysis of Concho water snake monitoring data collected from 1987 to 1996 attempted to evaluated the population dynamics of the species and assess the long-term viability (Whiting *et al.* 2008, pp. 438–439). The results, however, were inconclusive due to uncertainties in the various models used and the inability to account for snake movements from the database used in the analysis (Whiting *et al.* 2008, p. 443). The study stated that snakes continued to persist even in drought-prone areas with hydrologically dynamic systems (Whiting *et al.* 2008, p. 443). Although we lack adequate data on population size and viability, we have used data on range, persistence, and breeding activity as surrogates.

The Recovery Plan also discussed the movement of Concho water snakes to counteract adverse impacts of population fragmentation and prescribed the movement of four snakes (two of each sex) every five years in a specific pattern above and below Ivie Reservoir (Recovery Criterion 3). The 2004 Biological Opinion discussed population fragmentation (Service 2004, p. 52) and changed the specific requirement for snake movements to five male water snakes above and below both the Robert Lee and Freese Dams once every three years. The Service believes that these movements are sufficient to maintain genetic heterogeneity between the separated populations. The 2008 MOU requires the same movements of snakes by the District even after the species is delisted. The Service based its belief and change in snake movement requirements on information available from monitoring and capture and release data after the preparation of the Recovery Plan.

As a result of the new information discussed above, it is our belief that the Recovery Plan's criteria for recovery of the species have been met.

Significant Portion of the Range Analysis

Having determined that the Concho water snake no longer meets 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 is important to the conservation of the species because it contributes meaningfully 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.

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 in some cases for the Service to address the significance question first, and in others 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; conversely, 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 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 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. 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 Concho water snake warranted further consideration. We concluded through the five-factor analysis, in particular Factor A that the existing or potential threats are consistent throughout its range, and there is no portion of the range where one or more threats is geographically concentrated. We believe that there are no small geographic areas where localized threats still exist. Because the low level of threats to the species is essentially uniform throughout its range, no portion warrants further consideration.

In summary, Concho water snakes can survive lower flows than previously thought necessary for their survival; mandated flows and downstream senior water rights virtually assure maintenance of instream flows; viable populations of Concho water snakes exist in all three reaches of the species' range. Based on the snake's use of reservoirs, persistence, reproduction, and viability throughout its range, we have determined that none of the existing or potential threats, either alone or in combination with others, are likely to cause the Concho water snake to become in danger of extinction within the foreseeable future throughout all or a significant portion of its range. We believe the Concho water snake no longer requires the protection of the Act, and, therefore, we are proposing to remove it from the Federal List of Endangered and Threatened Wildlife.

Effects of This Proposed Rule

If made final, this rule would revise 50 CFR 17.11 (h) to remove the Concho water snake from the Federal List of Endangered and Threatened Wildlife. The prohibitions and conservation measures provided by the Act, particularly through sections 7 and 9, would no longer apply to this species. Federal agencies would no longer be required to consult with us to insure that any action they authorize, fund, or carry out may affect the Concho water snake. Critical habitat was designated for the Concho water snake on June 29, 1989 (54 FR 27377). If finalized, this rule would also revise 50 CFR 17.95(x) to remove the critical habitat designation.

Regulatory Planning and Review (Executive Order 12866)

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

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

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

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

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

Post-Delisting Monitoring

Section 4(g)(1) of the Act requires the Service to implement a system, in cooperation with the States, to monitor for not less than 5 years the status of all species that have recovered and been removed from the lists of threatened and endangered wildlife and plants (50 CFR 17.11, 17.12). The purpose of this post-delisting monitoring (PDM) is to verify that the species remains secure from risk of extinction after it has been removed from the protections of the Act. We are to make prompt use of the emergency listing authorities under section 4(b)(7) of the Act to prevent a significant risk to the well being of any

recovered species. Section 4(g) of the Act explicitly requires cooperation with the States in development and implementation of PDM programs, but we remain responsible for compliance with section 4(g) and, therefore, must remain actively engaged in all phases of PDM. We also seek active participation of other entities that are expected to assume responsibilities for the species' conservation, post-delisting.

The Service is developing a draft PDM plan in cooperation with the District and Texas Parks and Wildlife Department. We intend to publish a notice of availability of the draft plan in the **Federal Register**, and solicit public comments on that plan, prior to finalizing this proposed rule. All public comments on the draft PDM will be considered and incorporated into the final PDM plan as appropriate. The final PDM plan and any future revisions will be posted on our Endangered Species Program's national Web page (*http://endangered.fws.gov*) and on the Austin Ecological Services Field Office Web page (*http://www.fws.gov/southwest/es/AustinTexas/*).

Peer Review

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure that our proposed rule is based on scientifically sound data, assumptions, and analyses. We will send peer reviewers copies of this proposed rule immediately following publication in the **Federal Register** and will invite them to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposal to delist the Concho water snake. We will consider all comments and information received during the comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in this proposed rule clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the proposed rule in the ''Supplementary Information'' section of the preamble helpful in understanding the document? (6) What else could we do to make the proposed rule easier to understand? Send a copy of any written comments about how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW, Washington, DC 20240. You also may e-mail the comments to this address: *Exsec@ios.goi.gov.*

Paperwork Reduction Act

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. 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.

National Environmental Policy Act

We have determined that an Environmental Assessment or an Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations 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).

References Cited

A complete list of all references cited herein is available upon request from the U.S. Fish and Wildlife Service, Austin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this document are staff located at the Austin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and 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. Section 17.11(h) is amended by removing the entry ''Snake, Concho water'' under ''REPTILES'' from the List of Endangered and Threatened Wildlife.

§ 17.95 [Amended]

3. Amend section 17.95(c) by removing the critical habitat entry for ''Concho water snake, *Nerodia paucimaculata.*''

Dated: June 26, 2008.

H. Dale Hall,

Director, U.S. Fish and Wildlife Service.

[FR Doc. E8–15133 Filed 7–7–08; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 73, No. 131

Tuesday, July 8, 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

Departmental Administration; Public Hearing on BioPreferred Voluntary Labeling Program

AGENCY: Departmental Administration, USDA.

ACTION: Notice of public hearing.

SUMMARY: The Department of Agriculture (USDA) will hold a public meeting for interested stakeholders to provide an open forum to solicit feedback on the establishment of the BioPreferred voluntary labeling program. This program will allow USDA to authorize manufacturers and vendors of qualifying biobased products to use a ''USDA Certified Biobased Product'' label.

DATES: The public hearing will be held on Tuesday, July 22, 2008, from 1 p.m. to approximately 5 p.m.

ADDRESSES: The meeting will take place at the U.S. Department of Agriculture, South Building, Jefferson Auditorium, 1400 Independence Avenue, SW., Washington, DC 20250.

Pre-registration for this meeting is not required. However, for security purposes and to facilitate a smooth entry into a Federal facility, attendees may provide their names in advance as spelled on government issued identification via e-mail to *biopreferred@usda.gov.* Additionally, attendees are encouraged to gain entry into the building at Wing 7 on the corner of 14th Street and Independence Avenue, SW., and will be required to present government issued identification.

Those unable to attend the public meeting in person may participate via an audio bridge by calling 1 (800) 857–5233, verbal pass code ''Town Hall.'' For technical assistance, call (202) 720–8560. All callers using the above pass code will be placed in ''listen-only'' mode during the presentation of information. Participants using the audio bridge may verbally join the ''Question and answer'' portion of the meeting, by pressing *1 on a touch-tone telephone or by e-mailing questions or comments during the meeting to *biopreferred@usda.gov.*

Written comments may be submitted through Friday, August 1, 2008, to *biopreferred@usda.gov.* Copies of the meeting agenda may be viewed at *http://greening.usda.gov* or by contacting Mrs. Shana Love at the postal address, e-mail address, or phone listed below.

FOR FURTHER INFORMATION CONTACT: Mrs. Shana Love, Departmental Administration, Room 209–A, Whitten Building, 1400 Independence Avenue, SW., Washington, DC 20250–0103; telephone (202) 205–4008; fax (202) 720–2191; e-mail *biopreferred@usda.gov.*

SUPPLEMENTARY INFORMATION: Section 9002 of the Farm Security and Rural Investment Act of 2002 (FSRIA) (Pub. L. 107–171) established a program for the procurement of biobased products by Federal agencies and a voluntary program for labeling of biobased products. USDA refers to the program for the Federal procurement of biobased products and the voluntary program for labeling of biobased products, collectively, as the BioPreferred Program. The Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246) continues and expands provisions related to the BioPreferred Program.

Under the voluntary labeling program, the Department will authorize manufacturers and vendors of biobased products to use the label ''USDA Certified Biobased Product.'' In establishing the voluntary labeling program, USDA must identify criteria for determining which products may qualify to receive the label and specific requirements for how the label can be used.

USDA has one primary objective in establishing the voluntary labeling program: To encourage the purchase of biobased products. USDA believes that products carrying the label will become readily recognizable as biobased products, distinct from those that do not carry the label. Further, as the program matures and the label is used over time, consumers will recognize that products carrying the label meet certain criteria that set them apart from other biobased products.

In establishing the voluntary labeling program, USDA is seeking information from interested stakeholders in the following areas:

1. Who can apply for the label.

USDA is considering allowing both manufacturers and vendors of biobased products to apply for use of the label for their products. USDA is interested in comments on whether it is appropriate to include vendors as an entity eligible to apply the label, as some of the requirements associated with approval for use of the label will require information generally only available to the manufacturer. However, vendors may have more incentive to sell products carrying the label than the product manufacturer. USDA thus believes allowing vendors to apply for the label could further promote biobased products.

2. Applicable minimum biobased contents required for products to receive label certification.

USDA is considering allowing labeling for three categories of products: (a) Products within one or more designated biobased items within the BioPreferred Program; (b) products within non-designated items that are not mature market products; and (c) products not eligible for designation because of market maturity. For the latter two categories, where no minimum content has previously been designated, USDA is considering requiring a 50 percent minimum biobased content for use of the label.

USDA is also considering a process to allow a manufacturer, vendor, or trade association to seek an ''alternative minimum biobased content'' for products within categories (b) and (c) above, if they believe that the 50 percent minimum biobased content is not appropriate for their product(s). As part of seeking the alternative content levels, certain analysis and information, such as identifying similar biobased products and their manufacturers, would likely be required. While the specific analysis required will be determined on a case-by-case basis, USDA anticipates that each analysis will be similar to the process USDA uses to set minimum biobased contents under the preferred procurement program.

The public meeting discussion in part will address (a) the 50 percent applicable minimum biobased contents that products within these two

categories must meet in order to be eligible for use of the label and (b) the procedure under which an applicant can request alternative applicable minimum biobased content (that is, an applicable minimum biobased content other than 50 percent).

3. Testing procedures.

USDA is seeking comment on where required testing procedures for determining and validating biobased content and the life-cycle costs and environmental and human health effects of the labeled products [as determined by the Building Environmental and Economic Sustainability (BEES) or American Society for Testing and Materials (ASTM) analyses] are performed. USDA is considering permitting these tests to be performed by either a qualified third-party testing entity or by the manufacturer or vendor whose testing facilities are ASTM or International Organization for Standardization (ISO) compliant. Additionally, USDA is considering requiring that if the manufacturer or vendor chose to perform the tests that they be practitioners certified by a professional body, such as the American Center for Lifecycle Analysis.

4. Label content.

USDA is seeking comment on what information should be included on the label, such as a statement identifying the biobased content of the product, whether the label applies to the product, its packaging, or both, and use of the word ''BioPreferred'' in the label.

a. Biobased Content. USDA is considering requiring that the biobased content of the product be included on the label. USDA believes that including the biobased content of the product on the label will provide all consumers and purchasers of biobased products additional information that will further the purchase of such products.

b. Biobased Product Statement. It may also be important to identify for the consumer that the label applies to either the product or the packaging or both. Therefore, USDA is considering that the label include the appropriate biobased product statement(s) to make this clear. USDA is seeking comment on whether the biobased product statement or similar statements are needed. USDA is considering that the biobased product statement be integrated into the actual label that would be applied to the product or its packaging. USDA is also seeking comment and suggestion on how to clearly demonstrate the applicability of the label on the product, packaging, or in some other fashion.

c. Other possible label content. USDA in also considering the possible advantages and disadvantages of requiring additional information on the label. For example, information on product performance and/or on the life-cycle costs and environmental and human health effects of the labeled products (as determined by the BEES or ASTM analyses). The primary advantage of providing additional information on the label is to further educate purchasers about the environmental and health attributes of the biobased products they choose to purchase. However, because the results of the BEES and ASTM analyses are not available for non-labeled products and because they are only comparable between products within the same designated item or grouping of products, the labels could be misleading to purchasers. Also, the amount of space that would be needed for a legible presentation of this information could be a serious drawback for many small products (for example, household cleaners, hair care products, lip care products).

The public meeting in part will address the value of providing additional information on the label, what types of information should be included, and how it should be presented. Consideration should also be given to the fact that some of this additional information may be made available on the BioPreferred Program Web site.

d. Identifying products that are also eligible for preferred procurement under the BioPreferred Program. USDA is proposing to include the word ''BioPreferred'' on the label to identify those labeled products that are also eligible for preferred procurement under the BioPreferred Program. USDA is seeking comments on other options that can be used to identify products that are also eligible for preferred procurement under the BioPreferred Program. For example, one alternative USDA considered was requiring the use of a separate label that would simply say ''BioPreferred.'' Another alternative USDA considered was to require manufacturers to indicate in the product's literature that the product is eligible for preferred procurement under the BioPreferred Program rather than requiring such information on the label itself.

Dated: July 1, 2008.

Boyd K. Rutherford,

Assistant Secretary for Administration.

[FR Doc. E8–15411 Filed 7–7–08; 8:45 am]

BILLING CODE 3410–93–P

DEPARTMENT OF AGRICULTURE

Forest Service

Southwestern Region, Arizona, New Mexico, West Texas and Oklahoma: Proposed Surface Management of Natural Gas Resource Development on Jicarilla Ranger District, Carson National Forest, Rio Arriba County, NM; Additional Filings

AGENCY: Forest Service, USDA.

ACTION: Notice; correction.

SUMMARY: The USDA Forest Service published a notice of intent (69 FR 59881–59883, October 6, 2004) to prepare an environmental impact statement (EIS) for a proposed forest plan amendment for surface management of gas leasing and development on the Jicarilla Ranger District, Carson National Forest. In addition, the proposal includes a leasing analysis for unleased acres on the Jicarilla Ranger District.

The Environmental Protection Agency (EPA) published a notice of availability (NOA) for the draft EIS in the **Federal Register** on February 16, 2007 (72 FR 54900). The end of the comment period presented in the NOA was incorrect and subsequently rectified in an amended notice (72 FR 9521, March 2, 2007).

A corrected notice of intent was published in the **Federal Register** on May 15, 2007 (72 FR 27282) changing the estimated filing date for the final EIS from early summer 2005 to fall 2007.

Revised Dates: This notice changes the estimated filing date for the final EIS from fall 2007 to mid-late summer September 2008. When completed, EPA will publish a NOA of the final EIS in the **Federal Register**.

Corrected Unleased Acres: The draft EIS included a leasing analysis for approximately 3,800 unleased acres on the Jicarilla Ranger District. This notice corrects the number of unleased acres analyzed in the final EIS to approximately 5,000 acres.

Change in Responsible Official: In addition, this notice changes the official responsible for the EIS and subsequent record of decision from Forest Supervisor Martin D. Chavez, Jr. to Acting Forest Supervisor Erin Connelly, Carson National Forest.

FOR FURTHER INFORMATION CONTACT: Audrey Kuykendall, Forest Environmental Coordinator, Carson National Forest, at (575) 758–6212.

Dated: June 30, 2008.

Erin Connelly,

Acting Forest Supervisor, Carson National Forest.

[FR Doc. E8–15463 Filed 7–7–08; 8:45 am]

BILLING CODE 3410–11–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Meetings

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meetings.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) plans to hold a public information meeting on beach access routes during its regularly scheduled July meeting of the Board. The regular business meetings shall take place in Arlington, Virginia, Monday through Wednesday, July 21–23, 2008, at the times and location noted below.

DATES: The schedule of events is as follows:

Monday, July 21, 2008

10–Noon Planning and Evaluation Committee.
Noon–1:30 p.m. Presentation on Air Carrier Access Act Regulations.
1:30–2:30 Technical Programs Committee.
2:30–4 Budget Committee.
4–5:30 Presentation on Architectural Barriers Act Complaint Process.

Tuesday, July 22, 2008

10–5 Ad Hoc Committee Meetings (Closed to Public).

Wednesday, July 23, 2008

9–Noon Information Meeting on Beach Access Routes.
Noon–1:30 p.m. Presentation on Airport Common Use Self-Service Machines.
1:30–2:30 Executive Committee.
2:30–3:30 Board Meeting.

ADDRESS: All meetings will be held at The Westin Arlington Gateway Hotel, 801 North Glebe Road, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: For further information regarding the meetings, please contact Lawrence W. Roffee, Executive Director, (202) 272–0001 (voice) and (202) 272–0082 (TTY).

SUPPLEMENTARY INFORMATION: The Access Board will hold a public information meeting on beach access routes to gather additional information to assist in developing final accessibility guidelines. The meeting will consist of short presentations and interactive discussions with state and Federal representatives, advocates, environmentalists, and manufacturers of beach access products. In particular, the Board seeks input on the location of beach access routes, their distance, endpoints, coverage area, and frequency, as well as information on factors or conditions that may impact compliance. For additional information regarding this public information meeting, please contact Bill Botten, Accessibility Specialist, (202) 272–0014 (voice); (202) 272–0082 (TTY); or by e-mail: *botten@access-board.gov.*

At the Board meeting, the Access Board will consider the following agenda items:

- Approval of the draft April 2008 Board Meeting Minutes.
- ADA/ABA Accessibility Guidelines; Federal Agency Updates.
- Planning and Evaluation Committee Report.
- Technical Programs Committee Report.
- Budget Committee Report.
- Executive Committee Report.
- Telecommunications and Electronic and Information Technology Ad Hoc Committee Report.
- Transportation Vehicles Ad Hoc Committee Report.
- Outdoor Developed Areas Ad Hoc Committee Report.
- Passenger Vessels Ad Hoc Committee Report.
- Emergency Transportable Housing Ad Hoc Committee Report.
- Public Rights-of-Way Ad Hoc Committee Report.
- Airport Terminal Access Ad Hoc Committee Report.
- Accessible Design in Education Ad Hoc Committee Report.
- Election Assistance Commission Report.

All meetings are accessible to persons with disabilities. An assistive listening system, computer assisted real-time transcription (CART), and sign language interpreters will be available at the Board meetings. Persons attending Board meetings are requested to refrain from using perfume, cologne, and other fragrances for the comfort of other participants.

Lawrence W. Roffee,

Executive Director.

[FR Doc. E8–15383 Filed 7–7–08; 8:45 am]

BILLING CODE 8150–01–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and Opportunity for Public Comment.

Pursuant to section 251 of the Trade Act of 1974 (19 U.S.C. 2341 *et seq.*), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. EDA has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT

[6/1/08 through 6/30/08]

Firm	Address	Date accepted for filing	Products
Pacific Die Casting Corporation.	5712 NW Fruit Valley Rd., Vancouver, WA 98660.	6/16/2008	Aluminum and zinc castings. Also provides the following services: Machining, plating, painting.
H.J. Bergeron Pecan Shelling Plant, LLC.	1003 False River Rd., New Roads, LA 70760.	6/23/2008	Processor of pecans for human consumption.
Metalworks Worldwide Inc	3180 Berea Rd., Cleveland, OH 44111.	6/24/2008	Stamped parts of steel and aluminum.
Wesco Machine Products, Inc	S84 W18569 Enterprise, Muskego, WI 53150–.	6/24/2008	The company is a manufacturer of precision machined metal parts.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT—Continued

[6/1/08 through 6/30/08]

Firm	Address	Date accepted for filing	Products
E.J. Basler Co	9511 West Ainslie Street, Schiller Park, IL 60176.	6/2/2008	The company is a high tolerance manufacturer of machined metal parts and fittings.
Miles Enterprises, Inc	400–A Arundel Corporation, Glen Burnie, MD 21060–.	6/2/2008	Manufacture custom cabinetry and millwork.
Blitz Manufacturing Co. of Indiana.	263 America Pl, Jeffersonville, IN 47130.	6/9/2008	Polishing clothes for metal and jewelry (cotton).
Perras Lumber, Inc	45 Perras Road, Groveton, NH 03582.	6/9/2008	Perras Lumber produces board, ties, cants, grade lumber, pallet stock, pallets, wood chips.
Robbins Lumber, Inc	PO Box 9, Searsmont, ME 04973.	6/3/2008	Articles produced by Robbins Lumber include fingerjoint blocks, glued panels, saddle racks.
Z Becky Brown, Inc	18 Tallawood Lane, Elgin, SC 29045.	6/4/2008	The company manufactures and markets a lady's handbag that is injection molded.
Western Technology Services	PO Box 2974, Casper, WY 82602.	6/3/2008	Manufacturer of truck bodies for special purpose vehicles for mining and construction.
Precision Source	40 Maple Avenue, Esmond, RI 02917.	6/3/2008	Precision Source manufactures precision parts and quality turned components for Davenports, CNC.
Best Metal Fabricators, Inc	3332 West Flower Street, Phoenix, AZ 85017.	6/10/2008	Best Metal Fabricators, Inc. specializes in precision machining and sheet metal.
Standard Printed Circuits, Inc.	44 South Main Street, Sherburn, NY 13460.	6/18/2008	The company manufactures printed circuit boards from 1–14 layers, prototype through medium production.
Withers Manufacturing, Inc	13533 S. State Hwy 51, Coweta, OK 74429.	6/18/2008	Custom sheet metal fabrication, machining, and assembly of custom machine units.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Office of Performance Evaluation, Room 7009, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice. Please follow the procedures set forth in section 315.9 of EDA's final rule (71 FR 56704) for procedures for requesting a public hearing. The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: June 30, 2008.

William P. Kittredge,

Program Officer for TAA.

[FR Doc. E8–15419 Filed 7–7–08; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Action Affecting Export Privileges; Reza Mohammed Tabib and Terri Tabib; Order Denying Export Privileges

In the Matter of: Reza Mohammed Tabib, a/k/a Reza Tabib or a/ka Re Tabib, 31848 Via Del Paso, Winchester, CA 92596, Respondent; Tern Tabib, a/k/a Tern Repic, 31848 Via Del Paso, Winchester, CA 92596, Related Person.

A. Denial of Export Privileges of Reza Mohammed Tabib

On May 8, 2007, in the U.S. District Court for the Central District of California, Reza Mohammed Tabib, a/k/a Re Tabib and a/k/a Reza Tabib (''Tabib'' or ''Reza Tabib'') following a plea of guilty, was convicted of violating the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (2000)) (''IEEPA''). Tabib pled guilty to willfully attempting to export and transship from the United States to Iran aircraft parts, including approximately three F–14 maintenance kits, without obtaining from the U.S. Department of the Treasury, Office of Foreign Assets Control, a license or written authorization for such export and transshipment. Tabib was sentenced to 24 months of imprisonment followed by three years of supervised release.

Section 11(h) of the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C. app. 2401–2420 (2000)) (the ''Act'') [1] and Section 766.25 of the Export Administration Regulations (the ''Regulations''),[2] provide, in pertinent part, that ''[t]he Director of Exporter Services, in consultation with the Director of the Office of Export Enforcement, may deny export privileges of any person who has been convicted of a violation of * * * IEEPA,'' for a period not to exceed 10 years from the date of conviction. 15 CFR 766.25(a) and (d). In addition, Section 750.8 of the Regulations states that BIS's Office of Exporter Services may revoke any BIS licenses previously issued in which the person had an interest at the time of his conviction.

I have received notice of Tabib's conviction for violating the IEEPA, and have provided notice and an opportunity for Tabib to make a written submission to the Bureau of Industry and Security as provided in Section 766.25 of the Regulations. Having received no submission from Tabib and, following consultations with the Office of Export Enforcement, including its Director, I have decided to deny Tabib's export privileges under the Regulations for a period of five years from the date of Tabib's conviction. I have also decided to revoke all licenses issued pursuant to the Act or Regulations in which Tabib had an interest at the time of his conviction.

B. Denial of Export Privileges of Related Person

Pursuant to Sections 766.25(h) and 766.23 of the Regulations, the Director of BIS's Office of Exporter Services, in consultation with the Director of BIS's

[1] 50 U.S.C. app. 2401–2420. Since August 21, 2001, the Act has been in lapse and the Preident, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), as extended by the Notice of August 15, 2007 (72 FR 46137, Aug. 16, 2007), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (2000)) (''IEEPA'').

[2] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR Parts 730–774 (2008).

Office of Export Enforcement, may take action to name persons related to a Respondent by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business in order to prevent evasion of a denial order. Tern Tabib, a/k/a Tern Repic is Reza Tabib's wife and business partner. Tern Tabib pled guilty to violating 18 U.S.C. 1001 in connection with the attempted export by Reza Tabib of F–14 aircraft parts to Iran, specifically for willfully failing to file the Shipper's Export Declaration required for the export, and was placed on probation for two years. Tern Tabib is related to Reza Tabib by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business. BIS believes that naming Tern Tabib as a person related to Reza Tabib is necessary to avoid evasion of the denial order against Reza Tabib.

As provided in Section 766.23 of the Regulations, I gave notice to Tern Tabib that her export privileges under the Regulations could be denied for up to 10 years due to her relationship with Reza Tabib and that BIS believes naming her as a person related to Reza Tabib would be necessary to prevent evasion of a denial order imposed against Reza Tabib. In providing such notice, I gave Tern Tabib an opportunity to oppose her addition to the Reza Tabib Denial Order as a related party. Having received no submission from Tern Tabib, I have decided, following consultations with the Office of Export Enforcement, including its Director, to name Tern Tabib as a Related Person to the Reza Tabib Denial Order, thereby denying her export privileges for five years from the date of Reza Tabib's conviction.

I have also decided to revoke all licenses issued pursuant to the Act or Regulations in which the Related Person had an interest at the time of Reza Tabib's conviction. The five-year denial period will end on May 8, 2012.

Accordingly, *it is hereby ordered:*

I. Until May 8, 2012, Reza Mohammed Tabib, a/k/a Re Tabib and a/k/a Reza Tabib, 31848 Via Del Paso, Winchester, CA 92596, when acting for or on behalf of Tabib, his representatives, assigns, agents or employees, (''the Denied Person'') and the following person related to the Denied Person as defined by Section 766.23 of the Regulations: Tern Tabib, a/k/a Tern Repic, 31848 Via Del Paso, Winchester, CA 92596, and when acting for or on her behalf, her employees, agents or representatives, (''the Related Person'') (together, the Denied Person and the Related Person are ''Persons Subject To This Order'') may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Persons Subject To This Order any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Persons Subject To This Order of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Persons Subject To This Order acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Persons Subject To This Order of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Persons Subject To This Order in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Persons Subject To This Order, or service any item, of whatever origin, that is owned, possessed or controlled by the Persons Subject To This Order if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

III. In addition to the Related Person named above, after notice and opportunity for comment as provided in section 76623 of the Regulations, any other person, firm, corporation, or business organization related to the Denied Person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order if necessary to prevent evasion of the Order.

IV. This Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign produced direct product of U.S.-origin technology.

V. This Order is effective immediately and shall remain in effect until May 8, 2012.

VI. In accordance with Part 756 of the Regulations, Reza Tabib may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

VII. In accordance with Part 756 of the Regulations, the Related Person may also file an appeal of this Order with the Under Secretary of Commerce for Industry and Security.

VIII. A copy of this Order shall be delivered to the Denied Person and the Related Person. This Order shall be published in the **Federal Register**.

Dated: June 23, 2008.

Eileen M. Albanese,

Director, Office of Exporter Services.

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DEPARTMENT OF COMMERCE

International Trade Administration

A–583–816

Certain Stainless Steel Butt–Weld Pipe Fittings from Taiwan: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent to Rescind in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to requests from respondent Ta Chen Stainless Pipe Co., Ltd. (Ta Chen or respondent) and from Flowline Division of Markovitz

Enterprises, Inc. (Flowline Division), Gerlin, Inc., Shaw Alloy Piping Products, Inc., and Taylor Forge Stainless, Inc., (collectively, petitioners), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain stainless steel butt–weld pipe fittings (SSBWPFs) from Taiwan. Petitioners requested that the Department conduct an administrative review of Ta Chen, Liang Feng Stainless Steel Fitting Co., Ltd. (Liang Feng), Tru–Flow Industrial Co., Ltd. (Tru–Flow), Censor International Corporation (Censor), and PFP Taiwan Co., Ltd. (PFP).

With regard to Ta Chen, the Department preliminarily determines that sales of SSBWPFs from Taiwan have been sold in the United States at less than fair value (LTFV), as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act).

On September 10, 2007, Tru–Flow, Liang Feng, Censor, and PFP certified that they had no sales or shipments of subject merchandise to the United States during the period of review (POR). Based on Tru–Flow's, Liang Feng's, Censor's, and PFP's certified statements, information from U.S. Customs and Border Protection (CBP) indicating that these companies had no shipments to the United States of the subject merchandise during the POR, and the Department's verification of Liang Feng (as explained below), we hereby give notice that we intend to rescind the review regarding these four companies. For a full discussion of the intent to rescind with respect to Liang Feng, Tru–Flow, Censor, and PFP, see the ''Notice of Intent to Rescind in Part'' section of this notice.

If these preliminary results of review of Ta Chen's sales are adopted in the final results, we will instruct CBP to assess antidumping duties on appropriate entries based on the difference between the constructed export price (CEP) and the normal value (NV). Interested parties are invited to comment on these preliminary results. Parties who submit comments in this proceeding are requested to submit with the argument: 1) a statement of the issues, 2) a brief summary of the argument, and 3) a table of authorities.

EFFECTIVE DATE: July 8, 2008.

FOR FURTHER INFORMATION CONTACT: John Drury or Judy Lao, 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) 482–0195 or (202) 482–7924, respectively.

SUPPLEMENTARY INFORMATION:

Period of Review

The POR for this administrative review is June 1, 2006, through May 31, 2007.

Background

On June 16, 1993, the Department published in the **Federal Register** the antidumping duty order on SSBWPFs from Taiwan. See Amended Final Determination and Antidumping Duty Order: Certain Stainless Steel Butt–Weld Pipe Fittings from Taiwan, 58 FR 33250 (June 16, 1993). On June 1, 2007, the Department published a notice of opportunity to request administrative review for the period June 1, 2006, through May 31, 2007. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 72 FR 30542 (June 1, 2007).

In accordance with 19 CFR 351.213(b)(1) and (2), on June 28, 2007, petitioners requested an antidumping duty administrative review for Ta Chen, Liang Feng, Tru–Flow, Censor, and PFP. On June 28, 2007, Ta Chen requested an administrative review in accordance with 19 CFR 351.213(b)(1) and (2). On July 26, 2007, the Department published the notice of initiation of this administrative review. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation In Part*, 72 FR 41057 (July 26, 2007).

On August 6, 2007, the Department issued its antidumping duty questionnaire to Ta Chen, Liang Feng, Tru–Flow, Censor, and PFP. On September 10, 2007, the Department received statements from Liang Feng, Tru–Flow, Censor, and PFP, certifying that they had neither sales nor exports of subject SSBWPFs to the United States during the POR. On September 11, 2007, Ta Chen submitted its response to section A of the Department's questionnaire. On September 24, 2007, Ta Chen submitted its responses to sections B, C, and D of the Department's questionnaire.

On October 10, 2007, petitioners submitted comments regarding Ta Chen's section A response, primarily regarding alleged affiliation issues. On October 31, 2007, petitioners submitted comments on Ta Chen's section B and C responses. On November 29, 2007, petitioners submitted comments regarding Ta Chen's section D response. On December 28, 2007, the Department issued a supplemental section A through D questionnaire to Ta Chen. Ta Chen responded to the Department's section A through D supplemental questionnaire on January 28, 2008. On February 4 and 5, 2008, the Department issued additional A through D supplemental questionnaires requesting minor corrections and additional information to respondent's January 28, 2008 submission. On February 7, 2008, respondent submitted the information requested by the Department in its February 4 and 5, 2008, supplemental questionnaires. On February 28, 2008, and March 6, 2008, the Department issued additional supplemental questionnaires.

On March 7, 2008, the Department extended the time limit for the preliminary results of this administrative review by 120 days, to not later than June 30, 2007. *See Certain Stainless Steel Butt–Weld Pipe Fittings from Taiwan: Notice of Extension of Time Limit for Preliminary Results in Antidumping Duty Administrative Review*, 73 FR 12375 (March 7, 2008).

Ta Chen submitted a response to the Department's February 28, 2008, questionnaire on March 13, 2008. In addition, on March 13, 2008, respondent submitted a response to petitioners' affiliation allegations made on October 10, 2007. This submission was rejected by the Department on March 27, 2008, for being untimely filed. *See* Memorandum to the File from John Drury entitled ''2006–2007 Administrative Review of Stainless Steel Butt–Weld Pipe Fittings from Taiwan: E–mail conversation between counsel for Ta Chen and the Department of Commerce'' dated March 27, 2008. On March 14, 2008, respondent submitted a response to the Department's March 6, 2008 questionnaire. In addition, on March 14, 2008, the Department issued its verification agenda outlining the general procedures for the Department's verification of Ta Chen's information in Taiwan. On March 18, 2008, respondent submitted a revised section D database to the Department. On March 19, 2008, the Department issued an addendum to its March 14, 2008, verification agenda for Ta Chen. On March 19, 2008, the Department issued verification agendas for Liang Feng Stainless Steel Fitting Co. Ltd., and Liang Feng Enterprise, outlining the general procedures for its verifications of those companies in Taiwan. On March 24, 2008, petitioners submitted a letter in response to

respondent's March 14, 2008 comments.[1]

The Department verified Ta Chen's home market sales, partial U.S. sales, and cost information as submitted on the record, in Tainan, Taiwan from March 24, 2008, through April 4, 2008. The Department verified information regarding Liang Feng Stainless Steel Fitting Co. Ltd., and Liang Feng Enterprise on April 1, 2008. *See* Verification of the Questionnaire Responses of Ta Chen Stainless Pipe Co., Ltd. in the Antidumping Review of Certain Stainless Steel Butt–Weld Pipe Fittings from Taiwan (Ta Chen Verification Report), June 10, 2008, and Verification of the Sales Questionnaire Response of Liang Feng Stainless Steel Co., Ltd. in the Antidumping Review of Certain Stainless Steel Butt–Weld Pipe Fittings from Taiwan (Liang Feng Verification Report). On March 25, 2008, Ta Chen submitted its minor corrections presented at verification.

On April 4, 2008, the Department issued Ta Chen a verification agenda outlining the general procedures for verification of its sales made through its U.S. affiliate, Ta Chen International (TCI). The Department verified TCI's U.S. sales from April 14, 2008, through April 17, 2008, in Long Beach, California. On April 14, 2008, Ta Chen submitted a response to petitioners' April 1, 2008, submission. On April 21, 2008, Ta Chen submitted its minor corrections presented at its U.S. verification. On May 8, 2008, Ta Chen submitted corrections to its minor correction presented at its U.S. verification, as requested by the Department.

On June 12, 2008, the Department received comments from petitioners regarding Ta Chen's selling activities and the Department's findings regarding Ta Chen's selling activities in the home and U.S. markets. On June 18, 2008, both petitioners and respondent filed comments regarding the Department's verification reports. On June 20, 2008, respondent filed comments in response to petitioners' June 12, 2008, comments.

Notice of Intent to Rescind Review in Part

Pursuant to 19 CFR 351.213(d)(3), the Department may rescind an administrative review, in whole or with respect to a particular exporter or producer, if the Secretary concludes that there were no entries, exports, or sales of the subject merchandise during the POR. *See, e.g.*, Certain Oil Country Tubular Goods from Mexico: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission, 71 FR 27676–78 (May 12, 2006); *Stainless Steel Sheet and Strip in Coils from Japan: Final Rescission of Antidumping Duty Administrative Review*, 71 FR 26041 (May 3, 2006).

On September 10, 2007, Liang Feng, Tru–Flow, PFP, and Censor each submitted letters on the record certifying that their firms had no sales, entries, or exports of SSBWPFs to the United States during the POR. To confirm their statements, the Department conducted a CBP data inquiry and determined that there were no identifiable entries of SSBWPFs during the POR manufactured or exported by Liang Feng, Tru–Flow, PFP or Censor. *See* Memorandum to the File, through Angelica Mendoza, Program Manager from Judy Lao, Analyst: Ta Chen Stainless Pipe Co., Ltd. No Shipments Inquiry dated May 29, 2008. Based on the Department's verification of Liang Feng on April 1, 2008, the Department preliminarily determines that Liang Feng's certification of no shipments is correct. *See* the Analysis Memorandum dated June 30, 2008, for further information. Therefore, in accordance with 19 CFR 351.213(d)(3), the Department preliminarily intends to rescind this review with respect to Liang Feng, Tru–Flow, PFP and Censor.

Scope of the Order

The products covered by this order are certain stainless steel butt–weld pipe fittings, whether finished or unfinished, under 14 inches inside diameter. Certain welded stainless steel butt–weld pipe fittings are used to connect pipe sections in piping systems where conditions require welded connections. The subject merchandise is used where one or more of the following conditions is a factor in designing the piping system: (1) corrosion of the piping system will occur if material other than stainless steel is used; (2) contamination of the material in the system by the system itself must be prevented; (3) high temperatures are present; (4) extreme low temperatures are present; and (5) high pressures are contained within the system.

SSBWPFs come in a variety of shapes, with the following five shapes the most basic: elbows, tees, reducers, stub ends, and caps. The edges of finished SSBWPFs are beveled. Threaded, grooved, and bolted fittings are excluded from the order. The SSBWPFs subject to the order are currently classifiable under subheading 7307.23.00 of the Harmonized Tariff Schedule of the United States (HTSUS).

Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of the review is dispositive. SSBWPFs manufactured to American Society of Testing and Materials specification A774 are included in the scope of this order.

Affiliation

Petitioners claim that Ta Chen and its U.S. subsidiary, Ta Chen International (TCI), have several related parties that were not disclosed in its financial statements. Therefore, petitioners contend that Ta Chen's and TCI's financial statements (and thus its underlying accounting records) should not be relied upon for the purposes of these preliminary results. For the preliminary results, we have determined that the evidence on the record does not warrant a finding that the Department should disregard Ta Chen's or TCI's financial statements.

With respect to petitioners' argument that Ta Chen withheld from the Department the identities of a significant number of companies documented as Ta Chen affiliates, but not acknowledged as such by Ta Chen, the Department addressed this issue in the most recently completed antidumping duty administrative review for this order. *See Notice of Final Results and Final Rescission in Part of Antidumping Duty Administrative Review: Certain Stainless Steel Butt–Weld Pipe Fittings From Taiwan*, 73 FR 1202 (January 7, 2008), and accompanying Issues and Decision Memorandum at Comment 1, (*Ta Chen* 05–06). In addressing the issues of affiliation raised by petitioners, the Department noted that on May 30, 2007, the United States Court of International Trade (CIT) issued a decision and remand with respect to a number of identical issues raised by petitioners for the 2002–2003 administrative review of stainless steel butt–weld pipe fittings from Taiwan. *See Ta Chen Stainless Steel Pipe Co., Ltd. v. United States*, Consol. Court No. 05–00094, Slip Op. 07–87 (CIT May 30, 2007) (*Ta Chen v. United States* 2007). Based on the remand decision in *Ta Chen v. United States* 2007, the Department undertook an exhaustive review of Ta Chen's affiliated parties, and determined that Ta Chen had been a cooperative respondent and had accurately reported its affiliated parties as defined under section 771(33) of the Act (or 19 U.S.C. § 1677(33)). *See Final Results of Redetermination Pursuant to Court*

[1] On March 28, 2008, the Department rejected petitioners' March 24, 2008, submission on the basis that it contained new information, and stated that petitioners could revise and resubmit its letter by redacting all new information. Per the Department's request, petitioners re-submitted its March 24, 2008, letter on April 1, 2008.

Remand, Ta Chen Stainless Steel Pipe Co., Ltd. v. United States, Consol. Court No. 05–00094, Slip Op. 07–87 (CIT May 30, 2007), October 2, 2007.

On September 11, 2007, Ta Chen provided its response to the Department's section A antidumping duty questionnaire and reported a number of affiliated parties. *See* Ta Chen's section A questionnaire response dated September 11, 2007, at pages 7—12. In a supplemental questionnaire response, Ta Chen stated that it had reported all affiliated parties. *See* Ta Chen's supplemental questionnaire response dated January 28, 2008, at page 9. Based on an analysis of the information on the record, the Department preliminarily determines that Ta Chen's reported affiliates, and the relationships between Ta Chen and the reported affiliates, have not changed since the Department's analysis in Ta Chen 05–06. Additionally, the Department notes that in *Alloy Piping Products, Inc. v. United States*, Ct. No. 06–00454, Slip Op. 08–30 (CIT March 13, 2008), the CIT held that because ''the language of the Act and the regulations restrict antidumping reviews to cases where the foreign producer or affiliated parties deal in the subject merchandise, Commerce need not make a finding of affiliation for each company that does not actually sell the subject merchandise'' *Id.* at 10. Based on the decisions of the CIT, and the analysis of the evidence on the record, the Department preliminarily determines that Ta Chen has been a cooperative respondent with respect to the issue of reporting affiliated parties, and that Ta Chen accurately reported its affiliated parties as defined under section 771(33) of the Act.

Product Comparisons

For the purpose of determining appropriate product comparisons to SSBWPFs sold in the United States, we considered all SSBWPFs covered by the scope that were sold by Ta Chen in the home market during the POR to be ''foreign like products,'' in accordance with section 771(16) of the Act. Where there were no contemporaneous sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the physical characteristics reported by Ta Chen, as follows: specification, seam, grade, size and schedule.

The record shows that Ta Chen both purchased from and entered into tolling arrangements with unaffiliated Taiwanese manufacturers of SSBWPFs. We have preliminarily determined that Ta Chen is the sole exporter of the SSBWPFs under review, as the record evidence does not indicate that these manufacturers had knowledge that the purchased SSBWPFs would be exported to the United States. *See* Analysis Memorandum for the Preliminary Results of Administrative Review of Certain Stainless Steel Butt–Weld Pipe Fittings from Taiwan: Ta Chen Stainless Pipe Co., Ltd. (June 30, 2008). Therefore, knowledge that the SSBWPFs would also be sold to the United States cannot be imputed to those unaffiliated manufacturers. *See* 19 CFR 351.401(h).

Section 771(16)(A) of the Act defines ''foreign like product'' to be ''{t}he subject merchandise and other merchandise which is identical in physical characteristics with, and was produced in the same country by the same person as, that merchandise.'' Thus, consistent with the Department's past practice in reviews under this order, for products that Ta Chen has identified with certainty that it purchased from a particular unaffiliated producer and resold in the U.S. market, we have restricted the matching of products to products purchased by Ta Chen from the same unaffiliated producer and resold in the home market. *See, e.g.*, Certain Stainless Steel Butt–Weld Pipe Fittings from Taiwan: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent to Rescind in Part, 72 FR 35970 (July 2, 2007) and *Certain Stainless Steel Butt–Weld Pipe Fittings from Taiwan: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent to Rescind in Part*, 71 FR 39663 (July 13, 2006). For those products which Ta Chen cannot identify with certainty from which producers the merchandise was purchased, the Department has applied adverse facts available. *See* the ''Application of Facts Available and Adverse Facts Available'' section below.

Date of Sale

The Department's regulations state that it will normally use the date of invoice, as recorded in the exporter's or producer's records kept in the ordinary course of business, as the date of sale. *See* 19 CFR 351.401(i). If the Department can establish ''a different date {that} better reflects the date on which the exporter or producer establishes the material terms of sale,'' the Department may choose a different date. *Id.*

In the present review, Ta Chen claimed that invoice date should be used as the date of sale for its sales in the home market and to the United States. *See* Ta Chen's section A questionnaire response at 20–22 (Sept. 11, 2007). For home market (HM) sales, the Department examined whether the date Ta Chen issued its *pro forma* invoice or its actual invoice best reflects the date of sale. Based upon our review of the record evidence, we have preliminarily determined that actual invoice date should be the sale date because the material terms are set on the invoice date, and can potentially be changed up until the point of invoice date. This methodology is consistent with the practice in all the previous reviews of this proceeding. *See* Ta Chen's section B through D questionnaire response at B8–B9 and C9–C–10 (September 24, 2007). For U.S. sales, Ta Chen reported only constructed export price (CEP) sales, and we used the invoice date for sales to the first unaffiliated U.S. customer as changes to the terms of the sale may occur up to the issuance of the invoice. *See* Verification of the Sales Responses of Ta Chen International, United States Affiliate of Ta Chen Stainless Pipe Co., Ltd. (''Ta Chen'') in the Antidumping Review of Certain Stainless Steel Butt–Weld Pipe Fittings from Taiwan (TCI Verification Report), June 10, 2008, at page 10.

Fair Value Comparisons

To determine whether sales of SSBWPFs by Ta Chen to the United States were made at prices below NV, we compared CEP to NV, as described below. Pursuant to section 777A(d)(2) of the Act, we compared the CEPs of individual U.S. transactions to the monthly weighted–average NV of the foreign like product.

Constructed Export Price

Section 772(b) of the Act defines CEP as ''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 '' Consistent with recent past reviews, pursuant to section 772(b) of the Act, we calculated the price of Ta Chen's sales based on CEP because the sale to the first unaffiliated U.S. customer was made by Ta Chen's U.S. affiliate, TCI. See the Analysis Memorandum dated June 30, 2008, for further information. Ta Chen has two channels of distribution for U.S. sales: 1) Ta Chen ships the merchandise to TCI for inventory in its warehouses and subsequent resale to unaffiliated buyers (stock sales), and 2) Ta Chen ships the merchandise directly to TCI's U.S. customer (indent sales). The Department

finds that both stock and indent sales qualify as CEP sales because the original sale is between TCI and the U.S. customer. In addition, TCI handles all communication with the U.S. customer, from customer order to receipt of payment, and incurs the risk of non–payment. In addition, TCI handles customer complaints concerning issues such as product quality, specifications, delivery, and product returns. TCI is also responsible for payment of the ocean freight for all U.S. sales, while Ta Chen arranges the ocean freight logistics and paperwork. *See* Ta Chen's section A questionnaire response at A18 (Sept. 11, 2006).

We calculated CEP based on ex–warehouse or delivered prices to unaffiliated purchasers in the United States and, where appropriate, we added billing adjustments and deducted discounts. In accordance with section 772(d)(1) of the Act, the Department deducted direct and indirect selling expenses, including inventory carrying costs incurred by TCI for stock sales, related to commercial activity in the United States. We also made deductions for movement expenses, which include foreign inland freight, foreign brokerage and handling, ocean freight, containerization expense, Taiwan harbor construction tax, marine insurance, U.S. inland freight, U.S. brokerage and handling, and U.S. customs duties. Finally, in accordance with sections 772(d)(3) and 772(f) of the Act, we deducted CEP profit.

Normal Value

1. Home Market Viability

To determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared Ta Chen's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(B) of the Act. As Ta Chen's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable. *See* Ta Chen's Section A Resp., at 2 and Exhibit 1 (September 11, 2007).

2. Cost of Production Analysis

Because we disregarded sales below the cost of production (COP) in the prior administrative review, we have reasonable grounds to believe or suspect that sales by Ta Chen in its home market were made at prices below the COP, pursuant to sections 773(b)(1) and 773(b)(2)(A)(ii) of the Act. *See Certain Stainless Steel Butt–Weld Pipe Fittings From Taiwan: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent to Rescind in Part*, 72 FR 35972–35973 (July 2, 2007), and *Notice of Final Results and Final Rescission in Part of Antidumping Duty Administrative Review: Certain Stainless Steel Butt–Weld Pipe Fittings From Taiwan*, 73 FR 1202 (January 7, 2008).

Therefore, pursuant to section 773(b) of the Act, we conducted a COP analysis of home market sales by Ta Chen.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the respondent's cost of materials and fabrication for the foreign like product, plus amounts for general and administrative (G&A) expenses, financial expenses and all costs and expenses incidental to packing the merchandise. *See* the ''Test of Home Market Sales Prices'' section below for treatment of home market selling expenses. In our COP analysis, we relied on the COP data submitted by Ta Chen in its original and supplemental cost questionnaire responses, and adjusted the reported direct materials costs based on our findings at verification. *See* below.

B. Test of Home Market Prices

We compared the weighted–average COP to home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. In determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made within an extended period of time in substantial quantities, and were not at prices that permitted the recovery of all costs within a reasonable period of time, in accordance with sections 773(b)(1)(A) and 773(b)(1)(B) of the Act.

C. Results of COP Test

In accordance with section 773(b)(1) of the Act, when less than 20 percent of Ta Chen's sales of a given product were at prices less than the COP, we did not disregard any below–cost sales of that product because we determined that the below–cost sales were not made in substantial quantities, as defined by section 773(b)(2)(C) of the Act. When 20 percent or more of Ta Chen's sales of a given product during the POR were at prices less than the COP, we determined that such sales have been made in ''substantial quantities'' within an extended period of time, in accordance with sections 773(b)(2)(B) and 773(b)(2)(C) of the Act. In such cases, because we use POR average costs, we also determined that such sales were not made at prices that would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, for purposes of this administrative review, we appropriately disregarded below–cost sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

3. Price-to-Price Comparisons

As there were sales at prices above the COP for all product comparisons, we based NV on prices to home market customers. We deducted credit expenses and added interest revenue. In addition, we made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. Finally, in accordance with section 773(a)(6) of the Act, we also deducted home market packing costs and added U.S. packing costs.

Application of Facts Available

Pursuant to section 776(a)(2)(D) of the Act, the Department finds that the use of facts available (''FA'') is appropriate with regard to Ta Chen's reported costs of production. The Department preliminarily finds that Ta Chen significantly under–reported the direct material costs used in the cost of production of the subject merchandise. Furthermore, pursuant section 776(a)(2)(D) of the Act, the Department preliminarily finds that the application of FA is warranted with regard to Ta Chen's sales in the United States of merchandise purchased from other Taiwanese producers because the Department is unable to identify with certainty the actual producer of the merchandise being sold by Ta Chen.

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; (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. Section 782(d) of the Act provides that the Department must inform the interested party of the nature of any deficiency in its response and, to the extent practicable, allow the interested party to remedy or explain such deficiency. We

find that pursuant to section 776(a)(2)(D) of the Act, the application of FA is warranted for the calculation of Ta Chen's costs of production because Ta Chen provided information that could not be fully verified. Furthermore, we find that pursuant to section 776(a)(2)(D) of the Act, the application of FA is warranted because Ta Chen failed to identify with certainty the manufacturer for certain sales of SSBWPFs made by Ta Chen.

A. Cost of Production/Direct Materials Adjustment

Ta Chen purchases stainless steel coils to produce pipe, which it in turn processes into pipe fittings. *See* Ta Chen's sections B—D questionnaire response, September 27, 2007, at D–5. At verification, the Department found that Ta Chen's per–unit pipe fittings direct material cost (*i.e.*, the standard cost of pipe, plus the variance) inexplicably rose much more slowly throughout the POR than the price of Ta Chen's raw material input for making pipes (*i.e.*, stainless steel coils). *See* Ta Chen Verification Report, June 10, 2008, Section XIV at page 72. Normally, if raw material prices increase significantly then either the standard cost must increase significantly or the variance between actual and standard cost must increase significantly. For Ta Chen, neither of these increases appears to have occurred, with the result being that for some months the recorded cost of the input stainless steel coils used to produce the pipe exceeded Ta Chen's reported direct materials costs for fittings. Company officials could not explain this discrepancy at verification. *Id.* Therefore, the Department preliminarily determines that an adjustment is necessary to correct for this unexplained difference.

To adjust for the under–reporting of direct materials costs, the Department estimated direct material cost for the two sample products reviewed at verification (*i.e.*, one 304L and one 316L), yielded for pipe making and fittings fabrication. To adjust for the apparent underestimation of reported pipe costs, the Department first calculated estimated pipe input (coil) costs by using per kilogram (kg) coil purchase costs (for which data are available on the record for both coil grades, 304L and 316L, for all months of the POR). *See* Ta Chen's March 13, 2008, supplemental response at Exhibit 4th Supp.-18. The Department applied the per–kg. coil costs to the total reported weight of the pieces produced, by month. *See* Ta Chen Verification Report at Verification Exhibits 4 and 19. The Department then added to the estimated pipe input (coil) costs additional adjustments to account for yield loss from coil to pipe, yield loss from pipe to fittings, and pipe conversion costs. These additional adjustments were based upon the company's reported standard costs. *Id.* We compared the results of our calculation to Ta Chen's reported costs to calculate the adjustment to cost. We then applied these adjusted costs to Ta Chen's reported costs for merchandise produced and toll–produced by others for Ta Chen.

Pursuant to section 776(a) of the Act, we determine that these adjustments are an appropriate application of FA to direct materials cost. Ta Chen could not provide an explanation of the discrepancies between the reported per–unit costs and other verified information, the Department determines that the application of FA is warranted. Also, we preliminarily conclude that Ta Chen did not fail to act to the best of its ability because the underlying data verified and Ta Chen provided the information that highlighted the apparent discrepancies. As such, the Department determines that adverse FA pursuant to section 776(b) of the Act is not warranted in this instance. Therefore as noted above, we are adjusting the costs of production. *See* the Analysis Memo for a more detailed discussion of the calculations.

B. Identity of Manufacturers

Ta Chen not only manufactures subject fittings, but it also purchases completed fittings and has some toll processing performed by other unaffiliated Taiwanese manufacturers. *See* Ta Chen's section A questionnaire response dated September 11, 2007, at page 30. Ta Chen indicated that it reported itself (*i.e.*, Ta Chen) as the manufacturer for sales observations which it produced or which were toll processed. In instances where the sale was made of fittings purchased from a supplier, Ta Chen stated that it reported the supplier as the manufacturer in its sales databases.

However, during verification the Department found that Ta Chen had reported the other manufacturers' names in the manufacturing field for the sales database for all fittings that were purchased as well as toll processed. The Department also found that Ta Chen was apparently unable to distinguish between the manufacturers that toll process from those that supply certain types of subject fittings that Ta Chen re–sells, once the fittings that are toll–produced or purchased enter into Ta Chen's inventory system. *See* Ta Chen Verification Report at Section V, page 24.

For all fittings, the cost test and the DIFMER data must be manufacturer specific. The cost database does not distinguish control numbers (CONNUMs) by supplier. However, we can distinguish between toll processed and purchased merchandise by CONNUM in the cost database as the Department found at verification that CONNUMs of merchandise purchased by Ta Chen were unique. *See* Ta Chen's supplemental questionnaire response, March 13, 2008, at page 4. For the sales database, as stated above, for merchandise not identified as manufactured by Ta Chen, we are unable to distinguish between sales of toll processed merchandise from sales of merchandise purchased from other producers.

During verification, Ta Chen stated that in the normal course of business, it does not keep track of each specific manufacturer for each sale of fittings once the fittings enter into Ta Chen's inventory system. Ta Chen stated that the manufacturer identity of fittings that are toll processed and supplied is lost within its inventory before they are sold. *See* Ta Chen Verification Report at Section V, page 24. Ta Chen claims that companies that toll process and supply it fittings are not knowledgeable of Ta Chen's final customer or destination for the fittings. Although Ta Chen was able to identify which products it had purchased or toll processed during the POR for purposes of reporting its cost database, it is allegedly unable to link those with its sales database because of the loss of the manufacturer's identity that takes place when the subject fittings are commingled in inventory.

In examining the issue of manufacturer further at verification, Ta Chen informed the Department that for merchandise supplied by other manufacturers, ''when the fittings were supplied to Ta Chen Taiwan it knew which supplier had supplied the merchandise, but once the fittings entered into its inventory it could no longer distinguish'' who the manufacturer was. Id. With respect to the toll–processed merchandise, Ta Chen stated that ''when the fittings were shipped to Ta Chen Taiwan it knew which subcontractor had toll processed the fittings, but once the fittings entered into its inventory it could no longer distinguish which subcontractor had done the toll processing.'' *Id.* In response to questions about merchandise quality issues, Ta Chen stated that its ''quality control department checks the merchandise. The company stated that if there are

problems with the merchandise, the subcontractor or supplier would have to return to pick it up. The company said that in theory a mill test certificate would be provided to Ta Chen Taiwan by the subcontractors and suppliers.'' *Id*. at 26. Finally, the Department examined the system by which Ta Chen records purchases of fittings, and noted that there are codes available to denote the manufacturer from which fittings are purchased. *Id*. at 26–27.

The Department preliminarily determines, contrary to Ta Chen's statements at verification, that it is able to segregate those sales which were toll–produced on behalf of Ta Chen from those sales of merchandise which were purchased from unrelated manufacturers. *See* the Analysis Memorandum dated June 30, 2008, for further information. Additionally, while Ta Chen did not report the actual manufacturer of certain sales of SSBWPFs as requested by the Department, claiming that it was unable to distinguish from which producer it purchased certain fittings, the Department found at verification that Ta Chen was aware of the individual manufacturer of fittings both for quality assurance purposes and at least before the merchandise entered into Ta Chen's inventory system.

As noted above, section 776(a)(2) of the Act provides that, *inter alia*, if an interested party or any other person withholds information that has been requested by the Department or significantly impedes a proceeding under the antidumping statute, the administering authority and the Commission shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.

We preliminarily find that the use of FA is warranted in accordance with section 776(a)(2)(D) of the Act, because Ta Chen did not specifically identify the manufacturer of the subject merchandise, as requested by the Department in its antidumping duty questionnaire and in its March 6, 2008, supplemental questionnaire. Consistent with Section 782(d) of the Act, the Department requested clarification of Ta Chen's reporting of the manufacturers' identities with respect to the purchased fittings. However, Ta Chen reported that it ''is unable to discern which company manufactured the fitting.'' *See* Ta Chen's supplemental questionnaire response dated March 13, 2008, at page 1. At verification, Ta Chen again stated to Department officials that it was unable to discern which company manufactured the purchased fittings. *See* Ta Chen Verification Report, Section V at pages 23—28. *See also* TCI Verification Report, Section IV at page 8 and Section IX.A.30 at page 21. Additionally, at verification, the Department found that Ta Chen had not reported toll–processed merchandise as being produced by Ta Chen, as it had previously indicated to the Department. *See* Ta Chen's section B–D response, September 24, 2007, at pages B–31 and C–53 and 54. Instead, Ta Chen had reported the toll–producer as the manufacturer, rather than Ta Chen. The Department also found that the toll–producers were the same companies from which Ta Chen also purchased fittings. *Id*. at 24.

Pursuant to section 776(a) of the Act, we determine that an application of FA to those sales identified as purchased from other manufacturers is appropriate. Despite Ta Chen's claims to the contrary, the Department found numerous instances where it appears that Ta Chen could segregate toll–produced and purchased material according to manufacturer. However, because Ta Chen has stated that it is unable segregate merchandise once it enters into its accounting system, the Department will apply FA to those sales of merchandise purchased from other sources. The Department intends to examine this issue more closely for the final results of this review. Therefore the Department will apply as FA to those sales identified as sales of purchased merchandise the average rate calculated for all merchandise produced or toll processed by Ta Chen.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determined NV based on sales in the comparison market at the same level of trade (LOT) as the CEP transaction. The NV LOT is that of the starting–price sales in the comparison market. For CEP, it is the level of the constructed sale from the exporter to the importer. To determine whether NV sales are at a different LOT than CEP sales, we examine different selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, where possible, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales for which we are unable to quantify an LOT adjustment, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in levels between NV and CEP sales affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision).

Ta Chen reported two channels of distribution in the home market: unaffiliated distributors and end–users. We examined the selling activities reported for each channel of distribution and organized the reported selling activities into the following four selling functions: sales process and marketing support, freight and delivery, inventory maintenance and warehousing, and warranty and technical services. We found that Ta Chen's level of selling functions to its home market customers for each of the four selling functions did not vary significantly by channel of distribution. *See* Ta Chen's section A Resp., at 16–25 (Sept. 11, 2007); *see also* Ta Chen's supplemental questionnaire response, at 6 and Exhibit 8, (January 28, 2008). Therefore, we preliminarily conclude that the selling functions for the reported channels of distribution constitute one LOT in the comparison market.

For CEP sales, we examined the selling activities related to each of the selling functions between Ta Chen and its U.S. affiliate, TCI. Ta Chen reported that all of its sales to the United States are CEP sales made through TCI, *i.e.*, through one channel of distribution, and claimed that there is only one LOT. We examined the four selling functions and found that Ta Chen's selling functions for sales to TCI are performed regardless of whether shipments are going to TCI or directly to the unaffiliated customer. Therefore, we preliminary determine that Ta Chen's U.S. sales constitute a single LOT.

We then compared the selling functions Ta Chen provided in the home market LOT with the selling functions provided to the U.S. LOT. In the home market, Ta Chen provides significant selling functions related to the sales process and marketing support, warranty and technical service, inventory maintenance, and some technical services in the comparison market, which it does not for the U.S. LOT. On this basis, we determined that the HM LOT is at a more advanced level than Ta Chen's U.S. LOT. However, since we have preliminarily determined that there is only one LOT in the home market, we are unable to calculate a LOT adjustment. Because we have preliminarily determined that NV is established at a LOT that is at a more advanced stage of distribution than the LOT of the CEP transactions, and we are unable to quantify a LOT adjustment

pursuant to section 773(a)(7)(A) of the Act. Therefore, for these preliminary results, we have applied a CEP offset to the NV–CEP comparisons, in accordance with section 773(a)(7)(B) of the Act.

The Department intends to examine this issue fully for the final results in light of comments by parties on this issue.

Currency Conversion

For purposes of the preliminary results, we made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank, in accordance with section 773A(a) of the Act.

Preliminary Results of the Review

As a result of our review, we preliminarily determine the weighted–average dumping margin for the producer/exporter listed below for the period June 1, 2006, through May 31, 2007, to be as follows:

Weighted–Average Margin

Ta Chen Stainless Pipe Co., Ltd

2.93%

Disclosure and Public Comment

The Department will disclose to parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice. *See* 19 CFR 351.224(b). Pursuant to 19 CFR 351.309, interested parties may submit cases briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument: 1) a statement of the issue; 2) a brief summary of the argument; and, 3) a table of authorities.

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, Room 1870, within 30 days of the date of publication of this notice. Requests should contain: 1) the party's name, address and telephone number; 2) the number of participants; and, 3) a list of issues to be discussed. *See* 19 CFR 351.310(c). Issues raised in the hearing will be limited to those raised in the respective case briefs. The Department will issue the final results of the administrative review, including the results of its analysis of issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon completion of this review the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated an importer–specific ad valorem rate for merchandise exported by Ta Chen which is subject to this review. The Department intends to issue assessment instructions to CBP 15 days after the publication of final results of this 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 period of review produced by Ta Chen or by any of the companies for which we are rescinding this review and for which Ta Chen or 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.

Cash Deposit

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for the reviewed company will be the rate listed in the final results of review; (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company–specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be the ''all others'' rate of 51.01 percent, which is the ''all others'' rate established in the LTFV investigation. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Interested Parties

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 30, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–15475 Filed 7–7–08; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

A–570–831

Fresh Garlic from the People's Republic of China: Initiation of Antidumping Duty New Shipper Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 8, 2008.

SUMMARY: The Department of Commerce (Department) has determined that six timely requests for new shipper reviews (NSRs) of the antidumping duty order on fresh garlic from the People's Republic of China (PRC) meet the statutory and regulatory requirements for initiation. For three of the six NSRs which the Department is initiating, the period of review (POR) is November 1, 2007 through April 30, 2008. For the remaining three NSRs where the shipments entered after the POR, the Department is initiating and extending the POR by forty days, pursuant to 19 CFR 351.214(f)(2)(ii).

FOR FURTHER INFORMATION CONTACT: Martha Douthit or Elfi Blum, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–5050 or (202) 482–0197, respectively.

SUPPLEMENTARY INFORMATION:

Background

The notice announcing the antidumping duty order on fresh garlic from the PRC was published in the **Federal Register** on November 16, 1994. *See Notice of Antidumping Duty Order: Fresh Garlic from the People's Republic of China*, 59 FR 59209 (November 16, 1994) (*Order*).[1] On May 22, May 23, May 27, and May 30, 2008, pursuant to section 751(a)(2)(B)(i) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.214(c), the Department received six timely requests for new shipper reviews (NSR) from Jinxiang Hejia Co., Ltd (Hejia), Weifang Chenglong Import & Export Co., Ltd. (Chenglong), Jinxiang Tianheng Trade Co., Ltd (Tianheng), Juye Homestead Fruits and Vegetables Co., Ltd. (Juye Homestead), Chengwu County Yuanxiang Industry & Commerce, Ltd. (Chengwu), and Shandong Jinxiang Zhengyang Import & Export Co., Ltd. (Zhengyang), respectively. Five companies certified that they are both the producer and exporter of the subject merchandise upon which the requests for NSRs were based. One company, Chenglong, certified that it is the exporter of Jianxiang County Jichao Farm Business Co., Ltd. (Jichao), producer of the subject merchandise.

Pursuant to section 751(a)(2)(B)(i)(I) of the Act and 19 CFR 351.214(b)(2)(i), Hejia, Chenglong, Tianheng, Juye Homestead, Chengwu, and Zhengyang certified that they did not export fresh garlic to the United States during the period of investigation (POI). In addition, pursuant to section 751(a)(2)(B)(i)(II) of the Act and 19 CFR 351.214(b)(2)(iii)(A), Hejia, Chenglong, Tianheng, Juye Homestead, Chengwu, and Zhengyang certified that, since the initiation of the investigation, they have never been affiliated with any PRC exporter or producer who exported fresh garlic to the United States during the POI, including those not individually examined during the investigation. As required by 19 CFR 351.214(b)(2)(iii)(B), Hejia, Chenglong, Tianheng, Juye Homestead, Chengwu, and Zhengyang, also certified that their export activities were not controlled by the central government of the PRC.

Pursuant to 19 CFR 351.214(b)(2)(ii)(B), Jichao, the producer of the subject merchandise for Chenglong during the POR, certified that it did not export to the United States during the POI, and has never been affiliated with any exporter or producer who exported the subject merchandise to the United States during the POI.

In addition to the certifications described above, pursuant to 19 CFR 351.214(b)(2)(iv), Hejia, Chenglong, Tianheng, Juye Homestead, Chengwu, and Zhengyang submitted documentation establishing the following: (1) the date on which Hejia, Chenglong, Tianheng, Juye Homestead, Chengwu, and Zhengyang first shipped fresh garlic for export to the United States and the date on which the fresh garlic was first entered, or withdrawn from warehouse, for consumption; (2) the volume of their first shipment;[2] and (3) the date of their first sale to an unaffiliated customer in the United States.

The Department conducted CBP database queries and confirmed that Hejia, Chenglong, Tianheng, Juye Homestead, Chengwu, and Zhengyang's shipments of subject merchandise had entered the United States for consumption and that liquidation of such entries had been properly suspended for antidumping duties. The Department also confirmed by examining the CBP data that such entries were made during the NSR POR, or shortly thereafter. *See* Memorandum to File: New Shipper Review of Fresh Garlic from the People's Republic of China, Placing CBP data on the record, dated concurrently with this notice. Under 19 CFR 351.214(f)(2)(ii), when the sale of the subject merchandise occurs within the period of review (POR), but the entry occurs after the normal POR, the POR may be extended unless it would be likely to prevent the completion of the review within the time limits set by the Department's regulations. The preamble to the Department's regulations states that both the entry and the sale should occur during the POR, and that under ''appropriate'' circumstances the Department has the flexibility to extend the POR. *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27319–27320 (May 19, 1997). In this instance, for three of the exporters requesting a NSR, the sales were made during the POR but the shipments entered shortly after the end of the POR. The exporters provided documentation showing the date of entry following the end of the POR. It is appropriate for the Department to extend the POR by forty days. The Department does not find that this delay would prevent the completion of the review within the time limits set by the Department's regulations.

Initiation of New Shipper Reviews

Pursuant to section 751(a)(2)(B) of the Act and 19 CFR 351.214(d)(1), the Department finds that Hejia, Chenglong, Tianheng, Juye Homestead, Chengwu, and Zhengyang meet the threshold requirements for initiation of a NSR for their shipments of fresh garlic from the PRC. *See* Memorandum to File: Initiation of AD New Shipper Review: Fresh Garlic from the People's Republic of China, and the attached New Shipper Initiation Checklists, dated concurrently with this notice.

The POR for the three NSRs with shipments which entered during the POR is November 1, 2007 through April 30, 2008. *See* 19 CFR 351.214(g)(1)(i)(B). As discussed above, under 19 CFR 351.214(f)(2)(ii), when the sale of the subject merchandise occurs within the POR, but the entry occurs after the normal POR, the POR may be extended. Therefore, the POR for the NSR of the remaining three exporters and producers discussed above will be November 1, 2007 through May 31, 2008. The Department intends to issue the preliminary results of these reviews no later than 180 days from the date of initiation, and the final results of these reviews no later than 270 days from the date of initiation. *See* section 751(a)(2)(B)(iv) of the Act.

On August 17, 2006, the Pension Protection Act of 2006 (H.R. 4) was signed into law. Section 1632 of H.R. 4 temporarily suspends the authority of the Department to instruct CBP to collect a bond or other security in lieu of a cash deposit in new shipper reviews. Therefore, the posting of a bond under section 751(a)(2)(B)(iii) of the Act in lieu of a cash deposit is not available in this case. Importers of fresh garlic from the PRC manufactured and/or exported by Hejia, Chenglong, Tianheng, Juye Homestead, Chengwu, and Zhengyang must continue to post cash deposits of estimated antidumping duties on each entry of subject merchandise at the current PRC–wide rate of 376.67 percent.

Interested parties requiring access to proprietary information in this NSR should submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306. This initiation and notice are published in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214 and 351.221(c)(1)(i).

[1] Therefore, a request for a NSR based on the semi-annual anniversary month, May, was due to the Department by the final day of May 2008. *See* 19 CFR 351.214(d)(1).

[2] Hejia, Chenglong, Tianheng, Juye Homestead, Chengwu, and Zhengyang made no subsequent shipments to the United States.

Dated: June 30, 2008.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E8–15465 Filed 7–7–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

University of Colorado, et al., Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L.106–36; 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 2104, U.S. Department of Commerce, 14th and Constitution Ave, NW, Washington, D.C.

Comments: None received. Decision: Approved. We know of no instruments of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, that was being manufactured in the United States at the time of its order.

Docket Number: 08–016. Applicant: University of Colorado, Boulder, CO 80309. Instrument: Three–Channel Digital Radio Vector Field Sensor (RVFS). Manufacturer: Swedish Institute of Space Physics, Sweden. Intended Use: See notice at 73 FR 30377, May 27, 2008. Reasons: The instrument has a capability to work with dipole antennas of two different lengths (1 m and 3 m) and a capability to oversample the output I&Q data. These specifications enable the instrument to operate in both mobile–mount and stationary conditions which is essential to the intended use.

Docket Number: 08–017. Applicant: City College of the City University of New York, New York, NY 10031. Instrument: Ultrabroadband Ti:Sapphire Laser Model Rainbow–DFG. Manufacturer: Femtolasers, Inc., Austria. Intended Use: See notice at 73 FR 30377, May 27, 2008. Reasons: The instrument can generate optical pulses of less than 7 femtoseconds which is fundamental to the intended use. The amplifier system will be coupled with a 6 femtosecond laser and streak camera system to provide high spatial, high temporal and high spectral resolution for characterization, tunneling and carrier/phonon dynamics studies for nanoscale semiconductor quantum structures and devices.

Dated: July 1, 2008.

Faye Robinson,

Director, Statutory Import Programs Staff, Import Administration.

[FR Doc. E8–15450 Filed 7–7–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

C–570–926

Sodium Nitrite From the People's Republic of China: Final Affirmative Countervailing Duty Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) has reached a final determination that countervailable subsidies are being provided to producers/exporters of sodium nitrite from the People's Republic of China (PRC). On April 11, 2008, we issued the Preliminary Determination, *see Sodium Nitrite From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 73 FR 19816 (April 11, 2008) (Preliminary Determination). Because neither the Government of the People's Republic of China (GOC) nor the two mandatory company respondents participated in this investigation, the Department relied on facts available and applied adverse inferences in reaching the *Preliminary Determination*. The Department assigned a countervailable subsidy rate to each program under investigation using rates calculated in *Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007) and accompanying *Issues and Decision Memorandum (CFS from the PRC)*. We invited interested parties to comment on the *Preliminary Determination*. No interested party submitted comments regarding the *Preliminary Determination*.

Since the publication of the *Preliminary Determination*, the Department has reached affirmative final countervailing duty determinations in several investigations of products from the PRC. We have used the rates calculated in these intervening final determinations to revise the countervailable subsidy rates for certain programs. For information on the countervailable subsidy rates, *see* the ''Final Determination'' section of this notice.

EFFECTIVE DATE: July 8, 2008.

FOR FURTHER INFORMATION CONTACT: Gene Calvert or Paul Matino, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3586 or (202) 482–4146, respectively.

SUPPLEMENTARY INFORMATION:

Case History

The following events have occurred since the publication of the *Preliminary Determination* in the **Federal Register** on April 11, 2008. On April 14, 2008, petitioner (General Chemical LLC) submitted a letter, in accordance with section 705(a)(1) of the Tariff Act of 1930, as amended (the Act), requesting alignment of the final countervailing duty determination with the final determination in the companion antidumping duty investigation of sodium nitrite from the PRC. On April 28, 2008, the Department aligned the final countervailing duty determination with the final determination in the companion antidumping duty investigation of sodium nitrite from the PRC. *See Sodium Nitrite from the People's Republic of China: Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 73 FR 22920 (April 28, 2008).

Period of Investigation

The period of investigation (POI) for which we are measuring subsidies is calendar year 2006. See 19 CFR 351.204(b)(2).

Scope of the Investigation

The merchandise covered by this investigation is sodium nitrite in any form, at any purity level. In addition, the sodium nitrite covered by this investigation may or may not contain an anti–caking agent. Examples of names commonly used to reference sodium nitrite are nitrous acid, sodium salt, anti–rust, diazotizing salts, erinitrit, and filmerine. The chemical composition of sodium nitrite is NaNO2 and it is generally classified under subheading 2834.10.1000 of the Harmonized Tariff Schedule of the United States (HTSUS). The American Chemical Society Chemical Abstract Service (CAS) has assigned the name ''sodium nitrite'' to sodium nitrite. The CAS registry number is 7632–00–0. For purposes of the scope of this investigation, the narrative description is dispositive, not the tariff heading, CAS registry number or CAS name, which are provided for convenience and customs purposes.

Injury Test

Because the PRC is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, the International Trade Commission (ITC) is required to determine pursuant to section 701(a)(2) of the Act whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to, a United States industry. On January 14, 2008, the ITC published its preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of allegedly subsidized imports from the PRC of subject merchandise. *See Sodium Nitrite from China and Germany: Investigation Nos. 701–TA–453 and 731–TA–1136–1137 (Preliminary)*, 73 FR 2278, (January 14, 2008).

Application of Facts Available and Use of Adverse Inferences

Section 776 of the Act, governs the use of facts available and adverse facts available. Section 776(a) provides that if an interested party or any other person (1) withholds information that has been requested by the Department; (2) fails to provide such information by deadlines or in the form and manner requested; (3) significantly impedes a proceeding; or (4) provides such information but the information cannot be verified, the Department shall use the facts otherwise available in reaching its determination. The statute requires that certain conditions be met before the Department may resort to facts available. Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party an opportunity to remedy or to explain the deficiency.

If the party fails to remedy the deficiency within the applicable timelines, the Department may, subject to section 782(e) of the Act, disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act states that the Department shall not decline to consider information deemed ''deficient'' under section 782(d) of the Act if: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Section 776(b) of the Act provides that the Department may use an inference adverse to the interests of a party that has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information. *See Statement of Administrative Action* accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103–316, Vol. 1, 889–90 (1994) (SAA) at 870.

In the *Preliminary Determination*, the Department based the CVD rates for the two mandatory company respondents, Shanxi Jiaocheng Hongxing Chemical Co., Ltd. (Shanxi Jiaocheng) and Tianjin Soda Plant, together with its subsidiary company, Tianjin Port Free Trade Zone Pan Bohai International Trading Co., Ltd. (Tianjin Soda Plant) on facts otherwise available, pursuant to section 776(a)(2)(C) of the Act because they did not respond to the Department's countervailing duty questionnaire. Furthermore, in selecting from the facts available, the Department determined that an adverse inference was warranted, pursuant to section 776(b) of the Act because Shanxi Jiaocheng and Tianjin Soda Plant did not respond to the Department's questionnaire and therefore did not cooperate to the best of their abilities in the investigation. Preliminary Determination at 19817–18.

Neither the GOC nor Shanxi Jiaocheng or Tianjin Soda Plant have provided any information or argument that would warrant a reconsideration of the Department's *Preliminary Determination* that the reliance on facts available and the application of adverse inferences is warranted. Therefore, for purposes of this final determination we are relying on facts available and applying adverse inferences in accordance with section 776(b) of the Act.

Selection of the Adverse Facts Available Rate

In deciding which facts to use as adverse facts available, section 776(b) of the Act and 19 CFR 351.308(c)(1) authorize the Department to rely on information derived from (1) the petition, (2) a final determination in the investigation, (3) any previous review or determination, or (4) any other information placed on the record. The Department has no information on the record of this proceeding from which to select appropriate AFA rates for any of the subject programs, and because this is an investigation, we have no previous segments of the proceeding from which to draw potential AFA rates. In such cases, it is the Department's practice to select, as adverse facts available, the highest calculated rate in any segment of the proceeding. *See, e.g.*, Certain In–shell Roasted Pistachios from the Islamic Republic of Iran: Final Results of Countervailing Duty Administrative Review (Pistachios from Iran), 71 FR 66165 (November 13, 2006) and accompanying Issues and Decision Memorandum at Comment 1. The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the margin is sufficiently adverse ''as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.'' *See Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (February 23, 1998). The Department's practice also ensures ''that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See SAA* at 870. In choosing the appropriate balance between providing a respondent with an incentive to respond accurately and imposing a rate that is reasonably related to the respondent's prior commercial activity, selecting the highest prior rate ''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.'' *See Rhone Poulenc, Inc. v. United States*, 899 F. 2d 1185, 1190 (Fed. Cir. 1990).

As stated in the *Preliminary Determination*, the Department determined that Shanxi Jiaocheng and Tianjin Soda Plant each failed to act to the best of its ability in this investigation; thus, for each program examined, the Department made the adverse inference that each company benefitted from the program, consistent with our practice. *See, e.g.*, Certain Cold–Rolled Carbon Steel Flat Products from the Republic of Korea; Final Affirmative Countervailing Duty Determination, 67 FR 62102 (October 3, 2002). In addition, we stated in the *Preliminary Determination* that our practice is to rely upon the highest calculated program rate for the same program or for a similar type of program.[1] *See e.g.*, Circular Welded

[1] The Department's first preference is to use the highest calculated rate for the same program (*i.e.* identical program). If there is no identical program, then the Department will use the highest calculated rate for a similar program (*e.g.* tax program to tax program, loan program to loan program).

Carbon Quality Steel Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances, 73 FR 31966 (June 5, 2008) and accompanying Issues and Decision Memorandum at 2 *(CWP from the PRC); CFS from the PRC* at Comment 24; *Laminated Woven Sacks from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances*, 73 FR 35639 (June 24, 2008) and accompanying Issues and Decision Memorandum at 6–8 (*LWS from the PRC); see also Light–Walled Rectangular Pipe and Tube From People's Republic of China: Final Affirmative Countervailing Duty Investigation Determination*, 73 FR 35642 (June 24, 2008) and accompanying Issues and Decision Memorandum at 2 (*LWRP from the PRC*). We have selected the adverse facts available rate to apply to each program, for purposes of this final determination, consistent with this practice.

Information from the petition indicates that during the POI, the standard income tax for corporations in China was 30 percent and there is an additional local income tax at the rate of three percent. *See* the November 8, 2007 letter to the Secretary of Commerce, at Exhibit IV–12. To determine the program rate for the 16 alleged income tax programs under which companies receive either a reduction or exemption of income tax, we have applied an adverse inference that Shanxi Jiaocheng and Tianjin Soda Plant paid no income taxes during the POI. Therefore, the highest possible combined countervailable subsidy for the 16 national, provincial, and local income tax programs subject to this investigation total 33 percent. Thus, we are applying a countervailable rate of 33 percent on an overall basis for the 16 income tax programs (*i.e.*, the 16 income tax programs combined provided a countervailable subsidy of 33 percent). This 33 percent AFA rate does not apply to income tax credit or income tax refund programs.

For the remaining programs subject to this investigation (including income tax credit and income tax refund programs), we are applying, where applicable, the highest countervailable subsidy rate that was calculated in a prior final countervailing duty determination for a product from the PRC for the same or similar type of program (*i.e.*, subsidy programs regarding tax refunds or credits, value–added tax (VAT), and government–provided grants and loans). *See CFS from the PRC* at Comment 24 and *LWS from the PRC* at 6–8. Absent a subsidy rate for the same or similar type of program, we are applying the highest countervailable subsidy rate for any program otherwise listed in any prior final countervailing duty determination involving the PRC.[2] *See id*.

For a discussion of the application of the AFA rates for each program determined to be countervailable, *see* Memorandum to the File, *Sodium Nitrite from the PRC; Calculation of Countervailable Subsidy Rates for the Final Determination*, dated concurrently with this notice (*Sodium Nitrite Calculation Memorandum*). Attached to this memorandum are copies of *CFS from the PRC, LWS from the PRC, CWP from the PRC, and LWRP from the PRC*, which contain the public information concerning subsidy programs, including the subsidy rates, upon which we are relying as adverse facts available. *See Sodium Nitrite Calculation Memorandum*.

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 or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. The *SAA* emphasizes, however, that the Department need not prove that the selected facts available are the best alternative information. *See SAA* at 869.

With regard to the reliability aspect of corroboration, we note that these rates were calculated in prior final countervailing duty determinations. No information has been presented that calls into question the reliability of these calculated rates that we are applying as AFA. Unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company–specific benefits resulting from countervailable subsidy programs.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. Where circumstances indicate that the information is not appropriate as adverse facts available, the Department will not use it. *See, e.g.*, Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review, 61 FR 6812 (February 22, 1996). In the absence of record evidence concerning these programs due to respondents' decision not to participate in the investigation, the Department has reviewed the information concerning China subsidy programs in this and other cases. For those programs for which the Department has found a program–type match, we find that programs of the same type are relevant to the programs of this case. For the programs for which there is no program–type match, the Department has selected the highest calculated subsidy for any China program from which the respondents could conceivably receive a benefit to use as AFA. The rate is therefore relevant to the respondents in that it is an actual calculated CVD rate for a China program from which the respondents could receive a benefit. No evidence had been presented or obtained which contradicts the reliability or relevance of the secondary information which was information from a prior China CVD investigation. *See Preliminary Determination* at 19819. Due to the lack of participation by the respondents and the resulting lack of record information concerning these programs, the Department has corroborated the rates it selected to the extent practicable.

Final Determination

In accordance with section 705(c)(1)(B)(i) of the Act, we have assigned a subsidy rate to each of the two producers/exporters of the subject merchandise that were selected as mandatory respondent companies in this CVD investigation. We determine

[2] In applying the highest calculated countervailable subsidy rate for any program otherwise listed, we are disregarding the calculated rates for the programs ''Hot-Rolled Steel For Less Than Adequate Remuneration'' (*CWP from the PRC*), and ''Government Provision of Inputs for Less Than Adequate Remuneration'' (*LWS from the PR* C), because the industry under investigation in this proceeding cannot use the products for which these rates were calculated. *See Sodium Nitrite From the Federal Republic of Germany And The People's Republic of China: Petition For The Imposition of Antidumping And Countervailing Duties*, (November 8, 2007) Volume I at 32–33. *See also Sodium Nitrite from China and Germany: Investigation Nos. 701–TA–453 and 731–TA–1136–1137 (Preliminary)*, ITC Publication 3979, January 2008 at 8. The Department's decision to not use, as AFA, these program rates is based on the particular facts of this investigation and this particular set of facts may not be applicable or identifiable in another proceeding.

the total net countervailable subsidy rates to be:

Producer/Exporter	Subsidy Rate
Shanxi Jiaocheng Hongxing Chemical Co., Ltd. (Shanxi Jiaocheng)	169.01%
Tianjin Soda Plant Tianjin Port Free Trade Zone Pan Bohai International Trading Co., Ltd. (Tianjin Soda Plant)	169.01%
All Others	169.01%

With respect to the all others rate, section 705(c)(5)(A)(ii) of the Act provides that if the countervailable subsidy rates established for all exporters and producers individually investigated are determined entirely in accordance with section 776 of the Act, the Department may use any reasonable method to establish an all others rate for exporters and producers not individually investigated. In this case, the rate established for the two mandatory respondents is based entirely on facts available under section 776 of the Act. There is no other information on the record upon which we could determine an all others rate. As a result, we have used the AFA rate assigned for Shanxi Jiaocheng and Tianjin Soda Plant as the all others rate. This method is consistent with the Department's past practice. *See e.g.* Final Affirmative Countervailing Duty Determination: Certain Hot–Rolled Carbon Steel Flat Products From Argentina, 66 FR 37007, 37008 (July 16, 2001); *see also Final Affirmative Countervailing Duty Determination: Prestressed Steel Wire Strand From India*, 68 FR 68356, 68357 (December 8, 2003).

Suspension of Liquidation and Cash Deposit Requirements

In accordance with sections 705(c)(1)(B) of the Act, we directed U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of the subject merchandise from the PRC, which are entered or withdrawn from warehouse, for consumption on or after April 11, 2008, the date of publication of the *Preliminary Determination*. In accordance with sections 705(c)(1)(B) of the Act, we will instruct CBP to require cash deposits at the rates shown above on all entries of the subject merchandise from the PRC, entered or withdrawn from warehouse, for consumption on or after the date of publication of this final determination.

If the ITC issues a final affirmative injury determination, we will issue a countervailing duty order under section 706(a) of the Act. If the ITC determines that material injury to, threat of material injury to, or material retardation of, the domestic industry does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non–privileged and non–proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Import Administration.

Return or Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with section 351.305(a)(3) of the Department's regulations. Failure to comply is a violation of the APO.

This determination is issued and published pursuant to sections 705(d) and 777(i) of the Act.

Dated: June 30, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–15479 Filed 7–7–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–570–925)

Notice of Final Determination of Sales at Less Than Fair Value: Sodium Nitrite from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 8, 2008.

SUMMARY: The Department of Commerce (Department) determines that sodium nitrite from the People's Republic of China (PRC) is being, or is likely to be, sold in the United States at less than fair value (LTFV) as provided in section 735 of the Tariff Act of 1930, as amended (the Act). We made no changes to the preliminary dumping margin in this investigation. The final dumping margin for this investigation is listed in the ''Final Determination Margin'' section below. The period covered by this investigation is April 1, 2007, through September 30, 2007.

FOR FURTHER INFORMATION CONTACT: Magd Zalok or Rebecca Pandolph, AD/CVD Operations, Office 4 Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4162 and (202) 482–3627, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 23, 2008, the Department published in the **Federal Register** the notice of its preliminary determination of sales at LTFV in the antidumping duty investigation of sodium nitrite from the PRC. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Sodium Nitrite from the People's Republic of China*, 73 FR 21906 (April 23, 2008) (*Preliminary Determination*).

With respect to the Department's invitation to comment on the *Preliminary Determination*, on May 23, 2008, General Chemical LLC (the petitioner) submitted a case brief. No other party submitted case or rebuttal briefs in this proceeding.

Scope of the Investigation

The merchandise covered by this investigation is sodium nitrite in any form, at any purity level. In addition, the sodium nitrite covered by this investigation may or may not contain an anti–caking agent. Examples of names commonly used to reference sodium nitrite are nitrous acid, sodium salt, anti–rust, diazotizing salts, erinitrit, and filmerine. The chemical composition of sodium nitrite is NaNO2 and it is generally classified under subheading 2834.10.1000 of the Harmonized Tariff Schedule of the United States (HTSUS).

The American Chemical Society Chemical Abstract Service (CAS) has assigned the name ''sodium nitrite'' to sodium nitrite. The CAS registry number is 7632–00–0.

While the HTSUS subheading, CAS registry number, and CAS name are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Analysis of Comments Received

In its May 23, 2008, case brief, the petitioner argues that the Department should base its final determination, like the *Preliminary Determination*, on adverse facts available (AFA) because the two mandatory respondents, Qingdao Hengyuan Chemical Co., Ltd. (Qingdao) and Hualong Ammonium Nitrate Company Ltd. (Hualong), did not submit responses to the Department's questionnaire. In addition, the petitioner explains that it does not object to the preliminary AFA rate used by the Department (which is the highest margin alleged in the petition, as adjusted by the Department at initiation) because it believes the rate is consistent with both the dumping margins alleged in the petition and the dumping margins used for purposes of initiating the investigation. The petitioner notes that the Department's practice is to base an AFA rate on the highest margin in a proceeding and here the highest margin is the most probative evidence of current margins because, if it were not, evidence showing the margins to be less would have been provided.[1] *See* the May 23, 2008, submission, Sodium Nitrite from China: Case Brief of General Chemical LLC.

The petitioner also notes that no party filed separate rate information in this investigation. Given the PRC's status as a non–market economy (NME) country, and the lack of information on the record rebutting the Department's presumption that all companies in the PRC are subject to government control, the petitioner argues that the rate applied to the PRC–wide entity cannot be lower than the rate applied to Qingdao and Hualong. *See* the May 23, 2008, submission, Sodium Nitrite from China: Case Brief of General Chemical LLC.

We agree that the dumping margin in this case should be based on total AFA because the two mandatory respondents, Qingdao and Hualong, failed to respond to the Department's questionnaire. Moreover, by not responding to the Department's questionnaire, Qingdao and Hualong failed to establish their entitlement to separate rates, and thus they are part of the PRC–wide entity. Therefore, the AFA rate will be applied to the PRC–wide entity. *See* ''The PRC–Wide Rate'' section of this notice below for a full discussion of this topic.

No Changes Since the Preliminary Determination

Based on our analysis of the comments received, the Department has made no changes to its *Preliminary Determination*.

Separate Rates

No party filed separate rates information in this investigation. Therefore, as was the case in the *Preliminary Determination*, we have considered all PRC exporters of subject merchandise to be part of the PRC–wide entity.

The PRC–Wide Rate

Section 776(a)(2) of the Act provides that if an interested party withholds information requested by the Department, fails to provide information by the deadline or in the form or manner requested, or significantly impedes a proceeding, the Department shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. Furthermore, in selecting from among the facts otherwise available, section 776(b) of the Act permits the Department to use inferences that are adverse to a party if it finds that the party failed to cooperate by not acting to the best of its ability to comply with a request for information. Because, as noted above, Qingdao and Hualong are part of the PRC–wide entity, and they withheld information that is required by the Department to calculate dumping margins, the Department continues to conclude that it is appropriate to base the PRC–wide entity's dumping margin on facts available, pursuant to section 776(a) of the Act.[2]

Moreover, because Qingdao and Hualong did not respond to our request for information, we continue to find that the PRC–wide entity failed to cooperate to the best of its ability to comply with a request for information. Therefore, in selecting from among the facts otherwise available, an adverse inference is warranted. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products From Japan*, 65 FR 42985, 42986 (July 12, 2000) (applying total adverse facts available because the respondent failed to respond to the antidumping questionnaire). For the reasons noted in the *Preliminary Determination*, we continue to find that the highest dumping margin from the petition, 190.74 percent, as revised by the Department, is the appropriate AFA rate in this case. *See Preliminary Determination*, 73 FR at 21907–21908. As explained in the *Preliminary Determination*, we corroborated this rate pursuant to section 776(c) of the Act. *See Preliminary Determination*, 73 FR at 21908.

Since we begin with the presumption that all companies within an NME country are subject to government control, and no company submitted information to rebut that presumption, we are applying a single antidumping duty rate, the PRC–wide rate, to all exporters of subject merchandise from the PRC. *See, e.g., Synthetic Indigo from the People's Republic of China; Notice of Final Determination of Sales at Less Than Fair Value*, 65 FR 25706, 25707 (May 3, 2000) (applying the PRC–wide rate to all exporters of subject merchandise in the PRC based on the presumption that the export activities of the companies that failed to respond to the Department's questionnaire were controlled by the PRC government). Thus, the PRC–wide rate will apply to all entries of subject merchandise.

Final Determination Margin

We determine that the following weighted–average dumping margin exists for the period April 1, 2007, through September 30, 2007:

Manufacturer/exporter	Margin (percent)
PRC–Wide Rate	190.74

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B)(ii) of the Act, we are directing U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all imports of subject merchandise that is entered or withdrawn from warehouse, for consumption on or after April 23, 2008, the date of publication of the *Preliminary Determination* in the **Federal Register**. We will instruct CBP to continue to require a cash deposit or the posting of a bond for all companies based on the estimated weighted–average dumping margin shown above. The suspension of liquidation instructions will remain in effect until further notice.

[1] *See Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1190 (Fed. Cir. 1990).

[2] Section 782(d) of the Act is not applicable here because Qingdao and Hualong failed to provide any response to the Department's request for information.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our final determination of sales at LTFV. As our final determination is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will determine whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of the subject merchandise within 45 days of this final determination. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding APO

This notice also serves as a reminder to the 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. Timely written notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination and notice are issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: June 30, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8–15488 Filed 7–7–08; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

A–428–841

Notice of Final Determination of Sales at Less Than Fair Value: Sodium Nitrite from the Federal Republic of Germany

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (the Department) determines that imports of sodium nitrite from the Federal Republic of Germany (Germany) are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The final weighted–average dumping margins are listed below in the section entitled ''Final Determination of Investigation.''

EFFECTIVE DATE: July 8, 2008.

FOR FURTHER INFORMATION CONTACT: Brian C. Smith or Gemal Brangman, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482 1766 or (202) 482 3773, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 23, 2008, the Department published the preliminary determination of sales at LTFV in the antidumping investigation of sodium nitrite from Germany. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Sodium Nitrite from the Federal Republic of Germany*, 73 FR 21909 (April 23, 2008) (*Preliminary Determination*). We invited parties to comment on the *Preliminary Determination*. We received case briefs from the petitioner, General Chemical LLC, and the respondent, BASF AG (BASF), on May 23, 2008. The petitioner submitted a rebuttal brief on May 28, 2008. No party requested a hearing.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this antidumping investigation are addressed in the ''Issues and Decision Memorandum for the Final Determination in the Less–Than-Fair–Value Investigation of Sodium Nitrite from the Federal Republic of Germany'' (Decision Memorandum) from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, dated June 30, 2008, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded is attached to this notice as an appendix. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in the Decision Memorandum, which is on file in the Central Records Unit, room 1117, of the main Department Building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at *http://ia.ita.doc.gov/frn*. The paper copy and electronic version of the Decision Memorandum are identical in content.

Period of Investigation

The period of investigation is October 1, 2006, through September 30, 2007.

Scope of the Investigation

The merchandise covered by this investigation is sodium nitrite in any form, at any purity level. In addition, the sodium nitrite covered by this investigation may or may not contain an anti–caking agent. Examples of names commonly used to reference sodium nitrite are nitrous acid, sodium salt, anti–rust, diazotizing salts, erinitrit, and filmerine. The chemical composition of sodium nitrite is NaNO2 and it is generally classified under subheading 2834.10.1000 of the Harmonized Tariff Schedule of the United States (HTSUS). The American Chemical Society Chemical Abstract Service (CAS) has assigned the name ''sodium nitrite'' to sodium nitrite. The CAS registry number is 7632–00–0.

While the HTSUS subheading, CAS registry number, and CAS name are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Adverse Facts Available

For the final determination, we continue to find that, by failing to respond to the antidumping duty questionnaire, BASF, the sole mandatory respondent in this investigation, did not act to the best of its ability in this investigation. Therefore, the use of adverse facts available (AFA) is warranted for this company under sections 776(a)(2) and (b) of the Act. *See Preliminary Determination*, 73 FR at 21909–21910. As we explained in the *Preliminary Determination*, we selected as the AFA rate the highest margin alleged in the petition, 237.00 percent, as referenced in the notice of initiation. *See Sodium Nitrite from the Federal Republic of Germany and the People's Republic of China: Initiation of Antidumping Duty Investigations*, 73 FR 68563, 68567 (December 5, 2007). Further, as discussed in the *Preliminary Determination*, we corroborated the AFA rate pursuant to section 776(c) of the Act. *See Preliminary Determination*, 73 FR at 21910–21912, and Comment 1 of the Decision Memorandum accompanying this notice for further discussion.

All–Others Rate

For the final determination, we have continued to assign as the all–others rate the simple average of the margins in the petition in accordance with the Department's current practice. *See Preliminary Determination*, 73 FR at 21912, and Comment 2 of the Decision Memorandum accompanying this notice for further discussion.

Final Determination of Investigation

We determine that the following weighted–average dumping margins exist for the period October 1, 2006, through September 30, 2007:

Manufacturer/exporter	Margin (percent)
BASF AG	237.00
All Others	150.82

Continuation of Suspension of Liquidation

Pursuant to section 735(c)(1)(B) of the Act, we will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of subject merchandise from Germany, entered, or withdrawn from warehouse, for consumption on or after April 23, 2008, the date of publication of the *Preliminary Determination*. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted–average dumping margins, as indicated in the chart above, as follows: (1) the rate for the firm listed above will be the rate we have determined in this final determination; (2) if the exporter is not a firm identified in this investigation, but the producer is, the rate will be the rate established for the producer of the subject merchandise; (3) the rate for all other producers or exporters will be 150.82 percent.[1] These suspension–of-liquidation instructions will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our final determination. As our final determination is affirmative and in accordance with section 735(b)(2) of the Act, the ITC will determine, within 45 days, whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of the subject merchandise. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding APO

This notice also 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. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published pursuant to sections 735(d) and 777(i)(1) of the Act.

Dated: June 30, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

Appendix—Issues in Decision Memorandum

Comments

Issue 1: Selection of the Adverse Facts Available Rate for BASF

Issue 2: Selection of the All–Others Rate

[FR Doc. E8–15458 Filed 7–7–08; 8:45 am]

BILLING CODE 3510–DS–S

[1] This rate was incorrectly stated as 237.00 percent in the ''Suspension of Liquidation'' section of the *Preliminary Determination*. *See Preliminary Determination*, 73 FR at 21912.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XI83

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

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

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Northeast Region, NMFS (Assistant Regional Administrator), has made a preliminary determination that an Exempted Fishing Permit (EFP) application submitted by the University of New England (UNE) and the New England Aquarium (NEA) contains all of the required information and warrants further consideration. The Assistant Regional Administrator has made a preliminary determination that the activities authorized under this EFP would be consistent with the goals and objectives of the Northeast (NE) Skate Complex and NE Multispecies Fishery Management Plans (FMPs). However, further review and consultation may be necessary before a final determination is made to issue an EFP. Therefore, NMFS announces that the Assistant Regional Administrator proposes to recommend that an EFP be issued that would allow two commercial fishing vessels to conduct fishing operations that are otherwise restricted by the regulations governing the fisheries of the Northeastern United States. This EFP, which would enable researchers to study the immediate and short-term post-release mortality of skates, would grant exemptions from the regulations as follows: Retaining, possessing, or landing prohibited skate species, and skate possession limits for sampling purposes.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments must be received on or before July 23, 2008.

ADDRESSES: You may submit written comments by any of the following methods:

- Email: *DA8–145@noaa.gov*. Include in the subject line ''Comments on UNE/NEA skate bycatch mortality EFP.''
- Mail: Patricia A. Kurkul, Regional Administrator, NMFS, NE Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on UNE/NEA skate bycatch mortality EFP, DA8–145.''
- Fax: (978) 281–9135.

FOR FURTHER INFORMATION CONTACT: Emily Bryant, Fishery Management Specialist, 978–281–9244.

SUPPLEMENTARY INFORMATION: An application for an EFP was submitted on June 12, 2008, by Dr. James Sulikowski, from the Marine Science Center of UNE, for a project funded by the NOAA Saltonstall-Kennedy Grant Program. The primary goal of this project is to provide data to determine the immediate and short-term survivability of winter, smooth, little, and thorny skates. This research could provide valuable information for future skate management objectives. Results will be provided to the Northeast Fisheries Science Center and the New England Fishery Management Council. Researchers will also disseminate

results to a public audience at the NEA to increase awareness of skate conservation.

Since the stocks of these species are at or near overfished biomass thresholds, and winter and little skates are subject to directed fisheries, research on bycatch mortality of these species is needed. In order to conduct this research, the principal investigators have requested an exemption from possessing and handling prohibited skate species. Additionally, an exemption from skate possession restrictions would authorize project investigators to temporarily possess fish for scientific data collection purposes prior to returning all fish to the sea.

Two vessels would each conduct 50 trips in conjunction with commercial days-at-sea (DAS) trips, with one vessel fishing with commercial otter trawl gear and the other fishing with commercial gillnets. Both vessels would use standard commercial gear. Tows would vary in time among 30, 60, and 120 minutes to account for variations in tow duration that occur under normal fishing conditions. Gillnet soak times would vary but not exceed 24 hr. Two fishing trials would be conducted. The first would occur from September through November 2008. The second would occur from March through May 2009. Research would occur in the inshore and offshore waters off of New Hampshire and southern Massachusetts. These areas support the vast majority of skate landings that can also be accessed during normal fishing operations. All fishing would occur as day trips, and no fishing would occur in closed areas or during rolling closures. Only winter, thorny, smooth and little skates would be used for scientific research purposes. Northeast multispecies would be landed and sold, up to the current DAS possession limits.

The researchers propose fishing a total of 100 sea days; 50 days fishing with gillnet gear and 50 fishing with trawl gear. In other words, each vessel would fish for 25 days during each of the 2 trials (fall and spring). The objective is to assess at least 300 specimens of each of the 4 skate species per season, for a total 1,200 specimens per season, and 2,400 specimens for the entire project. The researchers plan to stagger trials in order to both deploy and retrieve pens on a given day, thus maximizing the number of trials that can be conducted in the proposed number of sea days.

In order to identify possible influences on discard mortality, the following variables would be recorded: Deck-time, season (fall, spring), depth of fishing, air and bottom seawater temperatures, estimated weight of catch, the total length and gender of skates, and handling techniques (e.g., picked or not picked; duration of deck exposure). When catch is hauled aboard, all skates would be tagged with spaghetti tags. Skates would either be immediately placed into a live well by one of the handling methods (without a pick or with a pick) or remain on the deck for 15 and 30 minutes before being transferred to live wells. While in the wells, specimens would be visually assessed. Any specimens that die prior to placement within a net pen would be placed on ice for subsequent necropsy.

Viable skates would be placed in experimental holding pens to be submerged and deployed to the seafloor for 72-hour trials. A total of 8 net pens would be used, with 20 to 40 skates in each pen. The modified basic shape would form a three-dimensional hexagon with each of the six rectangular sides measuring 5 ft (height) x 6 ft (length). Two PVC skeletons would be used for the bottom and top of each pen. Six vertical sections 5 feet in height would support the structure. The netting covering the pen would consist of 3 or 4–inch diamond mesh tetra twine. The base of each pen would be filled and weighted down with a heavy composite and would be affixed to the seafloor by 2 or 3 40–pound mushroom anchors to reduce the likelihood of pen rollover. Pens would be maneuvered in the water column using bridles secured to whale-safe swivels connected to a main tag line. Each pen would be marked at the surface with a highflyer and buoy.

In order to conduct control trials, UNE proposes to capture a few skates by handlines. If it proves to be unfeasible to capture enough skates by this method to make a statistically robust number of trials, vessels would conduct abbreviated trawls (e.g., 5-minute tows) to obtain minimally stressed controls.

The applicant may request minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

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

Dated: July 1, 2008.

Emily H. Menashes

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

[FR Doc. E8–15375 Filed 7–7–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Federal Consistency Appeal by Foothill/Eastern Transportation Corridor Agency

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (Commerce).

ACTION: Notice of Public Hearing.

SUMMARY: This notice provides information about a public hearing to be held by the National Oceanic and Atmospheric Administration (NOAA) in Irvine, California. The hearing involves an administrative appeal filed with the Department of Commerce by the Foothill/Eastern Transportation Corridor Agency and its board of directors (TCA). This notice also announces the reopening of the public and Federal agency comment period for the TCA Consistency Appeal, beginning July 21, 2008 and running through August 4, 2008.

DATES: NOAA will conduct a public hearing in the TCA Consistency Appeal on July 25, 2008. The hearing will begin at 10:30 a.m. and will continue until 8:30 p.m. Speaker registration begins at 10 a.m. on the day of the hearing.

ADDRESSES: The public hearing and speaker registration will be held at the University of California, Irvine, Bren Events Center, 100 Bren Events Center, Irvine, California 92697. Written comments on issues relevant to the Secretary's decision in this appeal may be submitted at the hearing. In addition, from July 21, 2008 to August 4, 2008, comments may be submitted by e-mail to *gcos.comment@noaa.gov* or by mail addressed to Thomas Street at the NOAA Office of the General Counsel for Ocean Services, 1305 East-West Highway, Room 6111, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Thomas Street, Attorney-Advisor, NOAA Office of the General Counsel, 301–713–2967, or Stephanie Campbell, Attorney-Advisor, NOAA Office of the General Counsel, 301–713–2967, or *gcos.inquiries@noaa.gov*.

SUPPLEMENTARY INFORMATION: On February 15, 2008, TCA filed notice of an appeal with the Secretary of

Commerce (Secretary), pursuant to the Coastal Zone Management Act of 1972 (CZMA), 16 U.S.C. 1451 *et seq.*, and implementing regulations found at 15 CFR Part 930, Subpart H. TCA appealed an objection by the California Coastal Commission (Commission) to TCA's proposed construction of an extension to California State Route 241 in northern San Diego and southern Orange Counties, California.

Under the CZMA, the Secretary may override the Commission's objection if he determines that the project is consistent with the objectives or purposes of the CZMA or is otherwise necessary in the interest of national security. To make the determination that the proposed activity is ''consistent with the objectives or purposes'' of the CZMA, the Secretary must find that: (1) The proposed activity furthers the national interest as articulated in sections 302 or 303 of the CZMA, in a significant or substantial manner; (2) the adverse effects of the proposed activity do not outweigh its contribution to the national interest, when those effects are considered separately or cumulatively; and (3) no reasonable alternative is available that would permit the activity to be conducted in a manner consistent with enforceable policies of the state's coastal management program. 15 CFR 930.121.

On March 17, 2008, NOAA published a notice in the **Federal Register** announcing, among other things, that a public hearing might be held concerning this appeal. The hearing will be held. This notice provides scheduling and procedural information about the hearing.

The hearing in this appeal will commence at 10:30 a.m. at the Bren Events Center and will continue throughout the day with afternoon and evening sessions. Intermissions are expected near noon and late in the afternoon (around 4:30 p.m.). Other recesses may be called as necessary. Speakers must register on the day of the hearing, on site, at the Bren Events Center. Registration of speakers will begin at 10 a.m. The order of the speakers will be determined by the NOAA officials administering the hearing. Speakers generally will be recognized in the order in which they register (a first-come-first-served basis), alternating between individuals from the general public and those representing organizations. Specific periods are expected to be set aside during the afternoon and evening sessions for remarks by elected officials. Depending on the number of persons wishing to speak, speakers from the general public will receive up to three minutes to present their oral comments. Elected officials and individuals representing organizations will receive five minutes to speak. Only one individual may speak on behalf of an organization.

Written comments on issues relevant to the Secretary's decision in this appeal may be submitted to NOAA at the hearing by any person in attendance. In addition, written comments may be submitted by e-mail to *gcos.comments@noaa.gov* or by mail addressed to Thomas Street, NOAA Office of General Counsel for Ocean Services, 1305 East-West Highway, Room 6111, Silver Spring, MD 20910. Comments must be received by August 4, 2008.

This hearing is being held to obtain information on issues the Secretary will likely consider in deciding the TCA's appeal. A summary of relevant issues as well as additional background on the appeal appeared in the **Federal Register** notice of March 17, 2008, announcing the appeal, and may be found on the Internet at *http://www.ogc.doc.gov/czma.com.htm*. This Web site also includes additional information on the hearing, including conduct and decorum that is required, restrictions on the use of cameras and recording equipment and the display of signs and banners in the hearing room, the process by which testimony will be transcribed and made part of the record, and other rules and guidelines. (Please see the set of Frequently Asked Questions regarding the hearing.)

Questions concerning the hearing should be directed to Thomas Street, Attorney-Advisor, NOAA Office of the General Counsel, 301–713–2967, or Stephanie Campbell, Attorney-Advisor, NOAA Office of the General Counsel, 301–713–2967, or *gcos.inquiries@noaa.gov*.

Dated: June 2, 2008.

Joel La Bissonniere,

Assistant General Counsel for Ocean Services.

[Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance.]

[FR Doc. E8–15500 Filed 7–7–08; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Hydrographic Services Review Panel Meeting

AGENCY: National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: The Hydrographic Services Review Panel (HSRP) was established by the Secretary of Commerce to advise the Under Secretary of Commerce for Oceans and Atmosphere on matters related to the responsibilities and authorities set forth in section 303 of the Hydrographic Services Improvement Act of 1998, its amendments, and such other appropriate matters that the Under Secretary refers to the Panel for review and advice.

Date and Time: The public meeting will be held July 29–30, 2008, from 8 a.m. to 5 p.m. on July 29th and 8 a.m. to 12:30 p.m. on July 30th.

Location: San Francisco, California. Sheraton Fisherman's Wharf, 2500 Mason Street, San Francisco, CA, 94133. The times and agenda topics are subject to change. Refer to the HSRP website listed below for the most current meeting agenda.

FOR FURTHER INFORMATION CONTACT: Captain Steven Barnum, NOAA, Designated Federal Official (DFO), Office of Coast Survey, National Ocean Service (NOS), NOAA (N/CS), 1315 East West Highway, Silver Spring, Maryland 20910; Telephone: 301–713–2770, Fax: 301–713–4019; e-mail: *Hydroservices.panel@noaa.gov* or visit the NOAA HSRP Web site at *http://nauticalcharts.noaa.gov/ocs/hsrp/hsrp.htm.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public and public comment periods will be scheduled at various times throughout the meeting. These comment periods will be part of the final agenda that will be published before the meeting date on the HSRP website listed above. Each individual or group making a verbal presentation will be limited to a total time of five (5) minutes. Written comments (at least 30 copies) should be submitted to the DFO by July 16, 2008. Written comments received by the DFO after July 16, 2008, will be distributed to the HSRP, but may not be reviewed before the meeting date. Approximately 25 seats will be available for the public, on a first-come, first-served basis.

Matters To Be Considered: (1) Swearing in of new member; (2) Panel discussion with various stakeholders in the region on use of and interest in NOAA Navigation Services; (3) Updates on NOAA/California partnership on Integrated Ocean and Coastal Mapping (IOCM) project, NOAA's Height Modernization and Print on Demand; (4)

briefing on Climate and the Coasts and Arctic issues; and (5) public statements.

Dated: July 2, 2008.

John Potts,

Acting, Associate Assistant Administrator for Management and CFO/CAO, Ocean Services and Coastal Zone Management.

[FR Doc. E8–15509 Filed 7–7–08; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XI58

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Construction and Operation of Offshore Oil and Gas Facilities in the Beaufort Sea, Alaska

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

ACTION: Notice of issuance of a letter of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notice is hereby given that NMFS has issued a letter of authorization (LOA) to BP Exploration (Alaska), Inc. (BPXA) to take marine mammals incidental to the production of offshore oil and gas at the Northstar development in the Beaufort Sea off Alaska.

DATES: This Authorization is effective from July 7, 2008, through July 6, 2009.

ADDRESSES: The LOA and supporting documentation may be obtained by writing to P. Michael Payne, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, or by telephoning one of the contacts listed here.

FOR FURTHER INFORMATION CONTACT: Candace Nachman or Ken Hollingshead (301) 713–2289, or Brad Smith (907) 271–3023.

SUPPLEMENTARY INFORMATION: Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, on request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region, if certain findings are made by NMFS and regulations are issued. Under the MMPA, the term ''take'' means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture, or kill marine mammals.

Authorization may be granted for periods up to 5 years if NMFS finds, after notice and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) of marine mammals for subsistence uses. In addition, NMFS must prescribe regulations setting forth the permissible methods of taking and other means of effecting the least practicable adverse impact on the species and its habitat, and on the availability of the species for subsistence uses. The regulations also must include requirements pertaining to the monitoring and reporting of such taking. Regulations governing the taking of marine mammals incidental to construction and operation of the offshore oil and gas facility at Northstar were made effective on April 6, 2006 (71 FR 11314, March 7, 2006), and remain in effect until April 6, 2011. For detailed information on this action, please refer to that document. These regulations include mitigation, monitoring, and reporting requirements. The six species of marine mammals that BP may take in small numbers during construction and operation of the Northstar facility are bowhead whales, gray whales, beluga whales, ringed seals, spotted seals, and bearded seals.

Summary of Request

On May 27, 2008, NMFS received a request from BPXA for a renewal of an LOA issued on July 6, 2007, for the taking of small numbers of marine mammals incidental to oil production operations at Northstar, under the regulations issued on March 7, 2006 (71 FR 11314). This request (BPXA, 2008) contains information in compliance with 50 CFR 216.209, which updates information provided in BPXA's original application for takings incidental to construction and operations at Northstar. BPXA also submitted the required activity and monitoring report under the 2007–2008 LOA.

Summary of Activity and Monitoring Under the 2007–2008 LOA

One offshore ice road was built during the 2006–2007 ice-covered season. Helicopters made 135 round trips to Northstar during the 2006–2007 ice-covered season to transport crew and materials to and from the facility and recommended flight corridors and altitude restrictions were maintained. Hagglunds tracked vehicles made 37 round trips between West Dock and Northstar Island, and the hovercraft made 574 round trips during the 2006–2007 ice-covered season.

Drilling activities were conducted at two well sites from November 17, 2006, to May 1, 2007. No vibratory or impact pile driving activities took place during the present reporting period. The 2007 repair activities consisted of removing the concrete blocks in areas that had sustained erosion and/or block damage, installing a new layer of filter fabric, installing gravel bags of various sizes to build up and stabilize the subgrade, installing another layer of filter fabric and an overlying layer of geogrid to reduce the susceptibility of the fabric to abrasion, and installing the concrete block armor.

Each month, four to seven aerial surveys were conducted to inspect the pipeline for leaks or spills. There were 25 reportable Northstar-related spills during the 2006–2007 ice-covered season and the 2007 open-water season. Material spilled included drilling mud, corrosion inhibitor, sewage, methanol, motor oil, diesel fuel, hydraulic fluid, lube oil, and propylene glycol. Most of this material remained in contaminant and was recovered. All spilled material was contained and cleaned up. Contaminated snow, ice, and gravel were removed with various types of equipment, hand tools, and absorbents. No clean-up activity was necessary after Northstar flare events during the reporting period. On May 18, 2007, one quart of hydraulic fluid was released from a ditch witch; a portion of this fluid reached Beaufort Sea surface water. Shovels were used to scrape up the contaminated snow and ice from the spill site and sorbents were used to soak up the materials from the water surface. All the contaminated materials were recovered from the ice and water surface, thereby avoiding impact to the environment.

During the open-water period, there were 190 helicopter round trips, 347 hovercraft round trips, 40 tug and barge trips, and 137 Alaska Clean Seas Bay-class boat round trips to Northstar. There were an additional three trips by Bay-class boats in association with acoustic monitoring of the bowhead whale migration.

Seal observations in 2007 began on May 15 and were conducted almost daily through July 31. Over the standard period of May 15–July 15, a total of three seals were counted during 57 days. This was much less than the total number of observations in 2005 and 2006 over the same period. As in 2005 and 2006, no seals were observed after July 15, when some monitoring continued. Results of seal counts conducted from Northstar Island during

the reporting period did not provide evidence, or reason to suspect, that any seals were killed or injured by Northstar-related activities during 2007. No activities were conducted that could have exposed pinnipeds and whales to underwater received levels greater than 190 dB re 1 μPa (rms) or 180 dB re 1 μPa (rms), respectively.

Seven Directional Autonomous Seafloor Acoustic Recorders (DASARs) were installed in August, 2007. Five of the devices were deployed at locations 11.4–21.4 km (7.1–13.3 mi) NNE of Northstar Island and recorded low-frequency sounds continuously for approximately 36 days, until October 3. Simultaneously, near-island recordings were obtained from two DASARs placed 410–480 m (1,345–1,575 ft) from Northstar over the same period. In total, 11,780 bowhead whale calls were recorded in approximately 36 days at the four offshore DASAR locations. A total of 10,146 calls, or 282 calls/day, were detected by two of the offshore DASARs combined. The 282 calls/day figure for 2007 is less than those recorded for 2003–2004 but greater than those for 2001, 2002, 2005, and 2006. The much higher call counts in 2007 compared to the two previous years are probably related to the absence of nearshore pack ice during the 2007 season, meaning there were probably more whales closer to shore.

Based on boat traffic records, sound emissions associated with Northstar activities in 2007 were probably somewhat higher than in 2006 but lower than in 2001–2003. However, the weather was also considerably windier in 2006, which increases baseline sound levels. BPXA has no evidence that the island *per se* was producing sounds that were different in amplitude or frequency characteristics compared to previous years.

Subsistence hunters from Nuiqsut who traveled to Cross Island for the annual bowhead whale hunt did not report any negative effects from Northstar activities on their ability to conduct the hunt. In 2007, Nuiqsut whalers landed three whales. One whale was struck and lost.

Authorization

BPXA complied with the requirements of the 2007 LOA, and NMFS has determined that the marine mammal take resulting from the 2007 construction and operation activities is within that analyzed in and anticipated by the associated regulations. Accordingly, NMFS has issued a 1–year LOA to BPXA, authorizing the taking of small numbers of marine mammals incidental to oil production operations at the Northstar offshore facility in state and Federal waters in the U.S. Beaufort Sea. Issuance of this LOA is based on findings described in the preamble to the final rule (71 FR 11314, March 7, 2006) and supported by information contained in BPXA's 2007 annual report that the activities described in the LOA will result in the taking of no more than small numbers of bowhead whales, beluga whales, ringed seals, and, possibly California gray whales, bearded seals, and spotted seals and that the total taking will have a negligible impact on these marine mammal stocks and would not have an unmitigable adverse impact on the availability of these species or stocks for taking for subsistence uses.

Dated: July 1, 2008.

James H. Lecky,

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

[FR Doc. E8–15473 Filed 7–7–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XI88

Taking of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Navy Training Operations Conducted Within the Navy Cherry Point Range Complex

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

ACTION: Notice; receipt of applications for a letter of authorization (LOA); request for comments and information.

SUMMARY: NMFS has received requests from the U.S. Navy (Navy) for an authorization for the take of marine mammals incidental to training operations conducted within the Navy Cherry Point Range Complex off the coast of North Carolina for the period beginning May 29, 2009 and ending May 28, 2014. Pursuant to the implementing regulations of the Marine Mammal Protection Act (MMPA), NMFS is announcing our receipt of the Navy's request for the development and implementation of regulations governing the incidental taking of marine mammals and inviting information, suggestions, and comments on the Navy's application and request.

DATES: Comments and information must be received no later than August 7, 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. The mailbox address for providing email comments is *PR1.0648–XI88@noaa.gov*. NMFS is not responsible for e-mail comments sent to addresses other than the one provided here. Comments sent via e-mail, including all attachments, must not exceed a 10–megabyte file size. Copies of the Navy's application may be obtained by writing to the address specified above (See **ADDRESSES**), telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*.

FOR FURTHER INFORMATION CONTACT: Shane Guan, Office of Protected Resources, NMFS, (301) 713–2289, ext. 137.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) if certain findings are made and regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings may be granted if NMFS finds that the taking will have no more than 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 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.

With respect to military readiness activities, the MMPA defines ''harassment'' as:

> (i) any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A Harassment]; or
>
> (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal

stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B Harassment].

Summary of Request

On June 13, 2008, NMFS received an application from the Navy requesting an LOA for the take of bottlenose and Atlantic spotted dolphins by Level B harassment incidental to the proposed training activities within the Navy's Cherry Point Range Complex over the course of 5 years. These training activities are classified as military readiness activities. The Cherry Point Range Complex geographically encompasses offshore and near-shore operation areas (OPAREAs), instrumented ranges, and special use airspace located along the U.S. Atlantic coast, and is shown in Figure 1 of the Navy's LOA application. Please refer to Table 31 of the LOA application for detailed information of the potential exposures from explosive ordnance (per year) for marine mammals in the proposed Cherry Point Range Complex area.

Specified Activities

In the application submitted to NMFS, the Navy requests authorizations for take of marine mammals incidental to conducting training operations within the Cherry Point Range Complex. These training activities consist of surface warfare, mine warfare, amphibious warfare, and vessel movement. A description of each of these training activities within each of the range complexes is provided below:

Surface Warfare

Surface Warfare (SUW) supports defense of a geographical area (*e.g.*, a zone or barrier) in cooperation with surface, subsurface, and air forces. SUW operations detect, localize, and track surface targets, primarily ships. Detected ships are monitored visually and with radar. Operations include identifying surface contacts, engaging with weapons, disengaging, evasion and avoiding attack, including implementation of radio silence and deceptive measures.

For the proposed Cherry Point Range Complex training operations, SUW involving the use of explosive ordnance includes air-to-surface Missile Exercises (MISSILEX). The MISSILEX would involve helicopter crews launch missiles at at-sea surface targets with the goal of destroying or disabling the target. MISSILEX (A-S) training in the Cherry Point Range Complex could occur during the day or at night.

Mine Warfare/Mine Exercises

Mine Warfare (MIW) includes the strategic, operational, and tactical use of mines and mine countermine measures (MCM). MIW training is divided into (a) the laying of mines to degrade the enemy's capabilities to wage land, air, and maritime warfare, and (b) the countering of enemy-laid mines to permit friendly maneuver or use of selected land or sea areas.

MIW consists of two unit level operations: airborne mine countermeasures (AMCM) and mine neutralization. AMCM or Mine Countermeasures Exercises (MCMEX) train forces to detect, identify, classify, mark, avoid, and disable (or verify destruction of) underwater mines (bottom or moored) using a variety of methods including air, surface, sub-surface, and ground assets. The AMCM systems include mine hunting sonar (AQS–24A), influence mine sweeping systems (MK–105 and MK–104), anti-mine ordnance (Airborne Mine Neutralization System (AMNS)), and moored mine sweep system (MK–103).

Mine Neutralization operations involve the detection, identification, evaluation, rendering safe, and disposal of underwater Unexploded Ordnance (UXO) that constitutes a threat to ships or personnel. Mine hunting techniques involve divers, specialized sonar, and unmanned underwater vehicles (UUVs) to locate and classify the mines and then destroy them using one of two methods: mechanical (explosive cutters) or influence (matching the acoustic, magnetic, or pressure signature of the mine).

In addition to the current mine exercises, the Organic Airborne Mine Countermeasures (OAMCM) training exercises would begin in the Navy Cherry Point Operating Area as these new systems are introduced into the fleet. The OAMCM systems include mine hunting sonar (AQS–20), influence mine sweeping towed arrays that emulates the magnetic and acoustic signatures of transit platforms, anti-mine ordnance systems, and mine hunting laser that uses a light imaging detecting and ranging (LIDAR) to detect, localize, and classify near-surface moored/floating mines.

MIW training using Explosive Ordnance Disposal (EOD) underwater detonations in the Navy Cherry Point Study Area occur only during daylight hours.

Amphibious Warfare

Amphibious Warfare (AMW) involves the utilization of naval firepower and logistics in combination with U.S. Marine Corps landing forces to project military power ashore. AMW encompasses a broad spectrum of operations involving maneuver from the sea to objectives ashore, ranging from shore assaults, boat raids, ship-to-shore maneuver, shore bombardment and other naval fire support, and air strike and close air support training. In the Cherry Point Range Complex, AMW training is limited to Firing Exercises (FIREX).

During an FIREX, surface ships use their main battery guns to fire from sea at land targets in support of military forces ashore. On the east coast, the land ranges where FIREX training can take place are limited. Therefore, land masses are simulated during east coast FIREX training using the Integrated Maritime Portable Acoustic Scoring and Simulation System (IMPASS) system, a system of buoys that simulate a land mass. FIREX training using IMPASS in the Cherry Point Range Complex study area occurs only during daylight hours.

Vessel Movement

Vessel movements are associated with most activities under the training operations in the Cherry Point Range Complex. Currently, the number of Navy vessels operating in the Cherry Point study areas varies based on training schedules and can range from 0 to about 10 vessels at any given time. Ship sizes range from 362 ft (110 m) for a submarine to 1,092 ft (333 m) for an aircraft carrier and speeds generally range from 10 to 14 knots. Operations involving vessel movements occur intermittently and are variable in duration, ranging from a few hours up to 2 weeks. These operations are widely dispersed throughout the operation area, which is a vast area encompassing 18,617 nm^2 (an area approximately the size of West Virginia). The Navy logs about 950 total vessel days within the Cherry Point study area during a typical year. Consequently, the density of ships within the study area at any given time is extremely low (*i.e.*, less than 0.005 ships/nm^2).

Proposed Monitoring and Mitigation Measures

The Navy is developing an Integrated Comprehensive Monitoring Program (ICMP) for marine species to assess the effects of training activities on marine species and investigate population trends in marine species distribution and abundance in various range

complexes and geographic locations where Navy training occurs. The primary tools available for monitoring include visual observations, acoustic monitoring, photo identification and tagging, and oceanographic and environmental data collection.

A list of proposed mitigation measures and standard operating procedures are described in the application for the proposed training operations. These mitigation measures include personnel training for watchstanders and lookouts in marine mammal monitoring, operating procedures for collision avoidance, specific measures applicable to the mid-Atlantic during North Atlantic right whale migration, and a series of measures for specific at-sea training events including surface-to-surface gunnery, etc. A detailed description of the monitoring and mitigation measures are provided in the applications.

Information Solicited

Interested persons may submit information, suggestions, and comments concerning the Navy's request (see **ADDRESSES**). All information, suggestions, and comments related to the Navy's Cherry Point Range Complex request and NMFS' potential development and implementation of regulations governing the incidental taking of marine mammals by the Navy's training activities will be considered by NMFS in developing, if appropriate, the most effective regulations governing the issuance of letters of authorization.

Dated: July 2, 2008.

James H. Lecky,

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

[FR Doc. E8–15472 Filed 7–7–08; 8:45 am]

BILLING CODE 3510–22–S

COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the U.S. Commission of Fine Arts is scheduled for 17 July 2008, at 10 a.m. Due to the closure of the National Building Museum that morning, the meeting will convene at 10 a.m. in the boardroom of the National Capital Planning Commission, 401 9th Street, NW., Suite 500, Washington, DC 20576, for the presentation and review of the National Capital Framework Plan. Following this presentation, the Commission meeting will reconvene at 12 noon in the Commission's offices in the National Building Museum, Suite 312, Judiciary Square, 401 F Street, NW., Washington, DC 20001–2728. Items of discussion may include buildings, parks, and memorials.

Draft agendas and additional information regarding the Commission are available on our Web site: *http://www.cfa.gov*. Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Thomas Luebke, Secretary, U.S. Commission of Fine Arts, at the above address, or call 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated in Washington, DC, 27 June 26, 2008.

Thomas Luebke,

Secretary.

[FR Doc. E8–15186 Filed 7–7–08; 8:45 am]

BILLING CODE 6330–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 08–45]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 08–45 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: June 30, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY
WASHINGTON, DC 20301-2800

JUN 2 0 2008

In reply refer to:
USP003046-08

The Honorable Nancy Pelosi
Speaker of the House of Representatives
Washington, DC 20515-6501

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 08-45, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to Korea for defense articles and services estimated to cost $200 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Richard J. Millies
Deputy Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Same ltr to:

House	Senate
Committee on Foreign Affairs	Committee on Foreign Relations
Committee on Armed Services	Committee on Armed Services
Committee on Appropriations	Committee on Appropriations

Transmittal No. 08-45

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) **Prospective Purchaser:** Republic of Korea

(ii) **Total Estimated Value:**

Major Defense Equipment*	$155 million
Other	$ 45 million
TOTAL	$200 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** 125 AIM-120C-7 Advanced Medium Range Air-to-Air Missiles (AMRAAM), 14 AIM-120C Captive Air Training Missiles, 2 AIM-120C Dummy Air Training Missiles, 35 AGM-65G MAVERICK Missiles, 6 TGM-65G MAVERICK Training Missiles, 280 Joint Direct Attack Munitions (JDAM) tail kits, 2 JDAM Load Build Trainers, 2 GBU-24 Laser Guided Bomb Units (PAVEWAY III), 32 GBU-12 Laser Guided Bomb Units (PAVEWAY II), 2 GBU-10 Laser Guided Bomb Units (PAVEWAY II), and 12,700 RR-170 Radar Jamming Chaff, containers, bomb components, spare/repair parts, publications, documentation, personnel training, training equipment, contractor technical and logistics personnel services, and other related support elements.

(iv) **Military Department:** Air Force (SAB)

(v) **Prior Related Cases, if any:** numerous cases from 1998 through 2008

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** See Annex attached

(viii) **Date Report Delivered to Congress:** JUN 20 2008

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Republic of Korea – Various Munitions and Weapon Systems

The Republic of Korea has requested a possible sale of 125 AIM-120C-7 Advanced Medium Range Air-to-Air Missiles (AMRAAM), 14 AIM-120C Captive Air Training Missiles, 2 AIM-120C Dummy Air Training Missiles, 35 AGM-65G MAVERICK Missiles, 6 TGM-65G MAVERICK Training Missiles, 280 Joint Direct Attack Munition (JDAM) tail kits, 2 JDAM Load Build Trainers, 2 GBU-24 Laser Guided Bomb Units (PAVEWAY III), 32 GBU-12 Laser Guided Bomb Units (PAVEWAY II), 2 GBU-10 Laser Guided Bomb Units (PAVEWAY II), and 12,700 RR-170 Radar Jamming Chaff, containers, bomb components, spare/repair parts, publications, documentation, personnel training, training equipment, contractor technical and logistics personnel services, and other related support elements. The estimated cost is $200 million.

The Republic of Korea is one of the major political and economic powers in East Asia and the Western Pacific and a key partner of the United States in ensuring peace and stability in that region. It is vital to the U.S. national interest to assist our ally in developing and maintaining a strong and ready self-defense capability, which will contribute to an acceptable military balance in the area. This proposed sale is consistent with those objectives. No foreign policy or military developments affect this proposed sale.

The proposed sale of weapon system support is being addressed in conjunction with the planned Direct Commercial Sale of 21 additional F-15K fighter aircraft. The proposed sale will significantly enhance the Korean Air Force's current air-to-air intercept capability to equal capabilities within their region of operations. Korea will have no difficulty absorbing these additional missiles into its armed forces.

The principal contractor is the Raytheon Corporation in Tucson, Arizona. There are no known offset agreements proposed in connection with this potential sale.

There are four U.S. Air Force pilots and five maintenance Extended Training Service Specialists in the Republic of Korea. They are expected to remain for the next five years.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 08-45

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The AIM-120C-7 Advanced Medium Range Air-to-Air Missile (AMRAAM) is a new generation air-to-air missile. The AIM-120C-7 AMRAAM hardware, including the missile guidance section, is classified Confidential. State-of-the-art technology is used in the missile to provide it with unique beyond-visual-range capability. Significant AIM-120C-7 features include a target detection device with embedded electronic countermeasures, an electronics unit within the guidance section that performs all radar signal processing, mid-course and terminal guidance, flight control, target detection and warhead burst point determination. Anti-tampering security measures have been incorporated into the AIM-120C-7 to prevent exploitation of the AMRAAM software.

2. The AGM-65G/H MAVERICK air-to-ground missile has an overall classification of Secret. The Secret aspects of the MAVERICK system are tactics, information revealing its vulnerability to countermeasures, and counter-countermeasures. Manuals and technical documents, which are necessary for operational use and organizational maintenance have portions that are, classified Confidential. Performance and operating logic of the countermeasures circuits are Secret.

3. The PAVEWAY II/III series of laser guided bombs consists of a guidance kit that converts existing unguided free-fall bombs into precision-guided "smart" munitions. At the core of each PAVEWAY II/III Munition Kit is a dumb bomb. A laser guidance kit is integrated with each dumb bomb to add the requisite level of accuracy. The kit consists of a computer-controlled group at the front end of the weapon and an airfoil group at the back. When a target is illuminated by a laser-either airborne or ground-based-the guidance fins react to signals from the control group and steer the weapon to the target. This precision-guided munition offers improved accuracy over free-fall bombs, thus providing the potential for reduced collateral damage.

4. The Joint Direct Attack Munition (JDAM) is a guidance kit that converts existing unguided free-fall bombs into precision-guided "smart" munitions. By adding a new tail section containing an Inertial Navigation System (INS)/Global Positioning System (GPS) guidance to unguided bombs, the cost effective JDAM provides highly accurate weapon delivery in any "flyable" weather. The INS, using updates from the GPS, helps guide the bomb to the target via the use of movable tail fins. Weapon accuracy is dependent on target coordinates and present position as entered into the guidance control unit. After weapon release, movable tail fins guide the weapon to the target coordinates. In addition to the tail kit, other elements in the overall system that are essential for successful employment include:

1) Access to accurate target coordinates.
2) INS/GPS capability.
3) Operational Test and Evaluation Plan.

5. Additional sensitive areas include operating manuals and maintenance technical orders containing performance information, operating and test procedures, and other information related to support operations and repair. The hardware, software, and data identified are classified to protect vulnerabilities, design and performance parameters and other similar critical information.

6. If a technologically advanced adversary were to obtain knowledge of the specific hardware in the proposed sale, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. E8–15277 Filed 7–7–08; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Business Board (DBB) Meeting

AGENCY: Department of Defense.

ACTION: Notice of Meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces that the following Federal advisory committee meeting of the Defense Business Board (DBB).

DATES: Thursday, July 17, 2008 (9 a.m. to 10:30a.m.)

ADDRESSES: Pentagon, Room 3E863.

FOR FURTHER INFORMATION CONTACT: Debora Duffy, Defense Business Board, 1155 Defense Pentagon, Room 3C288, Washington, DC 20301–1155, *Debora.duffy@osd.mil,* (703) 697–2168.

SUPPLEMENTARY INFORMATION: Purpose of the Meeting: The mission of the DBB is to advise the Secretary of Defense on effective strategies for implementation of best business practices of interest to the Department of Defense. At this meeting, the Board will deliberate on findings from three task groups: (1) Task Group Industrial Base Strategic Relationship, (2) Task Group on Enterprise Governance, and (3) Task Group on Capabilities Requirements. Copies of DRAFT Task Group presentations will be available on Friday, July 11th by contacting the DBB Office.

Agenda: 9 a.m.–10:30 a.m. Public Meeting.

- Task Group Reports:
- Industrial Base Strategic Relationship
- Enterprise Governance
- Capabilities Requirements

Public's Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is on a first-come basis. Members of the public who wish to attend the meeting must contact the Defense Business Board no later than Noon on Monday, July 14th to arrange a Pentagon escort. Public attendees are required to arrive at the Pentagon Metro Entrance by 8:30 a.m and complete security screening by 8:45 a.m. Security screening requires two forms of identification: (1) a government-issued photo I.D., and (2) any type of secondary I.D. which verifies the individual's name (i.e. debit card, credit card, work badge, social security card).

Committee's Designated Federal Officer: Phyllis Ferguson, Defense Business Board, 1155 Defense Pentagon, Room 3C288, Washington, DC 20301–1155, *Phyllis.ferguson@osd.mil,* (703) 695–7563.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written statements to the Defense Business Board about its mission and functions. Written statements may be submitted at any time or in response to the stated agenda of a planned meeting of the Defense Business Board.

All written statements shall be submitted to the Designated Federal

Officer for the Defense Business Board, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Designated Federal Officer can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

Statements being submitted in response to the agenda mentioned in this notice must be received by the Designated Federal Officer at the address listed above at least five calendar days prior to the meeting which is the subject of this notice. Written statements received after this date may not be provided to or considered by the Defense Business Board until its next meeting.

The Designated Federal Officer will review all timely submissions with the Defense Business Board Chairperson and ensure they are provided to all members of the Defense Business Board before the meeting that is the subject of this notice.

Dated: July 1, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E8–15431 Filed 7–7–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability of the Draft Programmatic Environmental Impact Statement (PEIS) for the Brigade Combat Team Transformation at Fort Irwin, CA

AGENCY: Department of the Army, DoD.

ACTION: Notice of Availability (NOA).

SUMMARY: The Fort Irwin National Training Center announces the availability of a Draft PEIS for mission realignment in support of Army Transformation, the Army Campaign Plan, and other Army initiatives. Pursuant to the National Environmental Policy Act (NEPA), the Department of the Army has prepared a PEIS to disclose potential impacts to the natural, physical, and human environment resulting from Army transformation efforts at Fort Irwin. Potential impacts from alternatives that are capable of meeting the Army's training, operations, and quality of life requirements have been analyzed. After reviewing a full range of possible alternative transformation options, the Army has selected Alternative 4 (increase of approximately 5,000 Soldiers and training rotation capacity increased to 12) as the preferred alternative for Army transformation.

DATES: The public comment period for the Draft PEIS will end 45 days after publication of an NOA in the **Federal Register** by the U.S. Environmental Protection Agency.

ADDRESSES: Copies of the Draft PEIS are available at the Directorate of Public Affairs. Send all written comments concerning this PEIS to: Mr. Muhammad Ban, U.S. Army National Training Center, Attn: IMWE–IRW–PWE, PO Box 105085, Fort Irwin, CA 92310–5085.

FOR FURTHER INFORMATION CONTACT: Mr. Muhammad Ban at (760) 380–3410, facsimile: (760) 380–2677, e-mail: *Muhammad.ban@us.army.mil.*

SUPPLEMENTARY INFORMATION: This Draft PEIS assesses the environmental impacts associated with the stationing and training of new Soldiers at Fort Irwin. In October 1999, the senior leadership of the Army expressed a new vision regarding future readiness, force structure, personnel and transformation of the Army to meet the challenges and demands of the 21st century. In December 2000, the Army proposed to undertake a synchronized program as stated in the Army Transformation Campaign Plan to transform the existing force structure (from a ''division-based'' force to a modular ''brigade-based'' force) in three phases over a 30-year period as described in the PEIS for Army Transformation. A Record of Decision for that PEIS was signed in April 2002 to proceed with the 30-year phased implementation of Army Transformation.

The Army leadership determined that the 11th Armored Cavalry Regiment (ACR) should transform over a period of several years to become a MultiComponent Heavy Brigade Combat Team (HBCT), deployable throughout the world. Other smaller units would also be stationed at Fort Irwin. Training rotations would increase and additional new Soldiers would be stationed at Fort Irwin. Additional cantonment and range construction would be necessary to support the increase in rotations and troops.

This Draft PEIS examines several alternatives for implementation of Army transformation at Fort Irwin. The PEIS will provide the Army senior leadership with a hard look at environmental impacts associated with the Proposed Action and better inform their decision-making process for selecting the final HBCT transformation option. This PEIS effort will assist the Army in arriving at a decision that can accommodate the Brigade's training, operations, and quality of life requirements while meeting the strategic defense needs of the nation.

After reviewing the full range of potential Army transformation options, four alternatives have been identified by the Army as reasonable for meeting the Army's needs and screening criteria. Alternatives include: (1) Increase of approximately 690 Soldiers and add capability to increase training rotations from 10 to 11 per year; (2) increase of approximately 5,000 Soldiers and add capability to increase training rotations from 10 to 11 per year; (3) increase of approximately 690 Soldiers and add capability to increase training rotations from 10 to 12 per year; and (4) increase of approximately 5,000 Soldiers and add capability to increase training rotations from 10 to 12 per year. The alternatives also include construction of new facilities, an increase in installation operations, and an adjustment of institutional programs to support realigned units and organizations. The No Action Alternative is described and its environmental impacts fully assessed and considered.

Direct, indirect, and cumulative impacts of the alternatives have been considered in the Draft PEIS. The Draft PEIS identifies significant impacts of each of the four alternative HBCT transformation scenarios. Potential impacts of concern regarding transformation activities (not in priority order) are: water supply, air quality, land uses, utility system capacities, traffic increases, and increase in hazardous material usage and hazardous waste generation. Impacts from alternatives would result from new construction, additional rotations, and additional personnel. Significant impacts to resources would be direct and long term. The No Action Alternative provides the baseline conditions for comparison to the other action alternatives. Additional concerns or impacts may be identified as a result of comments received on this Draft PEIS.

Public comment meetings on the Draft PEIS will be held with exact dates and locations to be determined and published in the local news media, via public notices or mailings well in advance of the meetings.

Dated: June 27, 2008.

Addison D. Davis, IV,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health).

[FR Doc. E8–15185 Filed 7–7–08; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Finding

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969 and the Council on Environmental Quality regulations (40 CFR parts 1500–1508), implementing procedural provisions of NEPA, and Executive Order (EO) 12114, Environmental Effects Abroad of Major Federal Actions, the Department of the Navy (DON) gives notice that a combined Finding of No Significant Impact (FONSI)/Finding of No Significant Harm (FONSH) has been issued and is available for Carrier Strike Group Joint Task Force Exercise (CSG JTFEX) July 2008.

DATES: The effective date of the finding is July 2, 2008.

ADDRESSES: Electronic copies of the combined FONSI/FONSH are available for public viewing or downloading at *http://www.navydocuments.com.*

FOR FURTHER INFORMATION CONTACT: Commander, Second Fleet Public Affairs, Commander Phillips telephone: 757–443–9822 or visit *http://www.navydocuments.com.*

SUPPLEMENTARY INFORMATION: CSG JTFEX (July 2008) is a major Navy Atlantic Fleet training exercise proposed to occur in July 2008 in the offshore Charleston and Jacksonville Operating Areas (OPAREAs) and adjacent military installations. The purpose of this exercise is to certify naval forces as combat-ready. Activities conducted during the exercise include air-to-ground (ATG) bombing at land ranges, Combat Search and Rescue (CSAR), Maritime Interdiction Operations (MIO), Naval Gunfire using non-explosive ordnance, Fast Attack Craft/Fast Inshore Attack Craft (FAC/FIAC), and Anti-Submarine Warfare (ASW), including use of mid-frequency active (MFA) sonar.

The FONSI is based on analysis contained in a Comprehensive Environmental Assessment (EA) addressing environmental impacts associated with land-based training for Major Atlantic Fleet Training Exercises on the East and Gulf Coasts of the U.S. (February 2006). The FONSH is based on analysis contained in a Comprehensive Overseas Environmental Assessment (OEA) (February 2006) and a Supplement to the Comprehensive OEA (SOEA) for environmental impacts associated with Navy's conduct of major exercise training in offshore operating areas along the East and Gulf Coasts of the U.S. (April 2008).

Environmental concerns addressed in the EA included land use, community facilities, coastal zone management, socioeconomics, cultural resources, airspace, air quality, noise, geology, soils, water resources, biological resources, munitions and hazardous materials management, and safety. The EA and OEA addressed potential impacts to the ocean physical environment, fish and Essential Fish Habitat; sea turtles and marine mammals; seabirds and migratory birds; endangered and threatened species; socioeconomics; and cultural resources. The SOEA included an updated analysis of MFA sonar use.

This action includes mitigation measures to reduce impacts to a level that is less than significant. In accordance with the Major Atlantic Fleet Training Exercise EA and OEA and the SOEA and the evaluation of the nature, scope and intensity of the proposed action, the Navy finds that the conduct of the CSG JTFEX in July 2008 will not significantly impact or harm the environment and, therefore, an Environmental Impact Statement or Overseas Environmental Impact Statement is not required.

Dated: July 1, 2008.

T. M. Cruz,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E8–15400 Filed 7–7–08; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Rehabilitation Research and Training Centers (RRTCs)

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of final priorities for RRTCs.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services announces four priorities for RRTCs under the Disability and Rehabilitation Research Projects and Centers Program administered by NIDRR. The Assistant Secretary may use one or more of these priorities for competitions in fiscal year (FY) 2008 and later years. We take this action to focus research attention on areas of national need. We intend these priorities to improve rehabilitation services and outcomes for individuals with disabilities.

DATES: *Effective Date:* These priorities are effective August 7, 2008.

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 6029, Potomac Center Plaza (PCP), Washington, DC 20202. Telephone: (202) 245–7462 or by e-mail: *donna.nangle@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION: We published a notice of proposed priorities (NPP) for NIDRR's RRTC program in the **Federal Register** on April 28, 2008 (73 FR 22932). The NPP included background statements that described our rationale for the priorities proposed in that notice.

There are differences between the NPP and this notice of final priorities (NFP) as discussed in the following section.

Analysis of Comments and Changes

In response to our invitation in the NPP, five parties submitted comments on the proposed priorities. An analysis of the comments and of any changes in the priorities since publication of the NPP follows.

Generally, we do not address technical and other minor changes, or suggested changes the law does not authorize us to make under the applicable statutory authority. In addition, we do not address comments that raised concerns not directly related to the proposed priorities.

General Comments

Comment: With regard to priorities 1 through 3, one commenter noted that ''scientifically based research'' is required only for research activities that require testing interventions. This commenter recommended that all research conducted under these priorities be ''scientifically based.''

Discussion: NIDRR only requires ''scientifically based research'' for research activities that involve testing interventions. The definition of ''scientifically based research'' used in

all of the priorities in this notice emphasizes the use of ''experimental or quasi-experimental designs in which individuals, entities, programs, or activities are assigned to different conditions and with appropriate controls to evaluate the effects of the condition of interest, with a preference for random-assignment experiments'' (See section 9101(37) of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001 for the definition of the term ''scientifically based research.''). NIDRR believes that experimental research designs are appropriate for research that involves testing interventions, but not necessarily for the other research activities to be carried out under these priorities. For example, experimental designs are not generally appropriate or necessary in the initial stages of developing new measures and methods, identifying or developing interventions, or determining the experiences and outcomes of individuals with disabilities who seek to return to work.

Changes: None.

Comment: One commenter noted that each of the proposed priorities included an incorrect reference for the Department's definition of the term scientifically based research.

Discussion: We agree and will make this change.

Changes: In all four priorities, we have changed the reference for the Department's definition of scientifically based research to section 9101(37) of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001.

Comment: Two commenters recommended that NIDRR remove all references to employment from priorities 1 through 3. One of these commenters noted that NIDRR's Long Range Plan for fiscal years 2005–2009 (Plan) acknowledges the continued need for research on medical rehabilitation interventions to improve function, as well as health research to improve outcomes such as health and wellness. This commenter suggested that including an employment-related outcome in the priorities that focus primarily on health and function topics will dilute the impact of research carried out under NIDRR's employment and health and function domains. This commenter also expressed concern that the focus on employment outcomes would preclude research on community participation outcomes and recommended that NIDRR include in each priority a statement from its Plan that acknowledges the importance of health and function among people with disabilities to achieve NIDRR's mission and the goals of employment and community participation.

Discussion: NIDRR does not agree with these comments and the associated recommendations. In the Plan, we state: ''While the proposed plan is organized along domains of research [e.g., employment, health and function, participation and community living] for the sake of manageability, it also makes clear that disability is a holistic phenomenon that involves many overlapping and cross-domain issues.'' (See 71 FR 8166, 8166.) We also note, ''In addition, with respect to those programs for which NIDRR establishes annual priorities—Rehabilitation Research and Training Centers (RRTCs), Rehabilitation Engineering Research Centers (RERCs), and Disability and Rehabilitation Research Projects (DRRPs)—NIDRR may require applicants to focus on one or more target populations or issues that cut across domains.'' We indicate clearly in the Plan that RRTCs are expected to be multidisciplinary—in other words, to combine the strengths and perspectives of researchers from multiple disciplines and areas of expertise. (See 71 FR 8166, 8177.) Therefore, we believe that a focus on employment in priorities 1 through 3 is consistent with the multidisciplinary approach in the Plan.

Although a mandatory focus on employment outcomes in these priorities may limit research activities related to outcomes in other domains, NIDRR believes that research involving both the health and function and employment domains will generate knowledge that can be used to improve both medical rehabilitation and vocational rehabilitation (VR) services for individuals with disabilities. NIDRR recognizes that there are many factors likely to affect the relationship between health and functional abilities, on the one hand, and employment outcomes, on the other. Research under these priorities can help provide insight into this relationship so that medical and VR services can be optimized and targeted appropriately.

Changes: None.

Comment: Referring to priorities 1 through 3, one commenter recommended removing the requirement that the centers recruit research participants from VR populations. The commenter noted that such a requirement would unnecessarily limit study populations, create recruitment barriers, and result in unnecessarily expensive and lengthy studies to demonstrate empirical relationships between health and functional status and employment outcomes.

Discussion: Proposed priorities 1 through 3 did not require recruitment of research participants from populations of individuals who are served by State VR programs. The priorities state that the center must conduct research on individuals who are served by the State VR Services program, or who receive rehabilitation services from other sources.

Changes: None.

Priority 2—Enhancing the Functional and Employment Outcomes of Individuals With Multiple Sclerosis

Comment: In reference to language in paragraph (b) of this priority, one commenter noted that research and clinical information indicate that the vast majority of individuals with multiple sclerosis (MS) already live in community settings. The commenter stated that it is important to support research that improves the ability of individuals with MS to participate in the community and suggested that NIDRR revise the priority to reflect that focus.

Discussion: We intended to emphasize the need for research to improve employment and community participation outcomes in this priority. We will change the priority to clarify our intent.

Changes: In paragraph (b) of this priority, we have clarified that the grantee must examine, among other things, interventions to enhance community participation.

Comment: One commenter stated that there is a need for research on strategies and assistive devices that enhance the functional and community participation outcomes among individuals with MS.

Discussion: While NIDRR agrees with the commenter that there is a need for research about strategies and assistive devices to enhance the functional and community participation outcomes for individuals with MS, NIDRR does not believe that it is necessary to revise the priority to address this specific need. Applicants under this priority already have flexibility to choose the types of interventions they propose to identify, or to develop and evaluate. Assistive devices are one specific type of intervention that could be examined under this priority.

Changes: None.

Priority 3—Aging With Physical Disability: Reducing Secondary Conditions and Enhancing Health and Participation, Including Employment

Comment: One commenter asked whether applicants under this priority must choose from the list of impairment groups in the second paragraph of the

priority when selecting the groups that will be the focus of their research.

Discussion: The short list of impairment groups in the priority provides examples; applicants are not restricted to this list. Applicants are free to select the group or groups that will be the focus of their research.

Changes: None.

Comment: One commenter asked whether the focus of this priority is exclusively on individuals with disabilities who are 65 years of age or older, or if the focus is also on adults with disabilities in middle age.

Discussion: NIDRR does not intend for this center to focus only on individuals with disabilities who are 65 years of age or older. As we describe in the background statement for this priority, NIDRR is interested in the experience of individuals who acquired their disability at birth, childhood, or early adulthood and who are now aging. We will add language to the priority to make this clear.

Changes: We have changed the language to clarify that the center funded under this priority must focus its research on individuals with a physical disability, including those who acquired their disability at birth, in childhood, or in early adulthood and who are now aging into middle or late adulthood.

Comment: One commenter noted that the prevention of falls among individuals with physical disabilities should be a key research priority.

Discussion: NIDRR agrees that the prevention of falls is a topic that is relevant to individuals who are aging with physical disabilities. Applicants are free to propose research on this topic under this priority.

Changes: None.

Priority 4—Participation and Community Living for Individuals With Psychiatric Disabilities

Comment: One commenter requested that NIDRR provide references to the Substance Abuse and Mental Health Services Administration's (SAMHSA's) Best Practices Planning and Implementation Grants program, to facilitate collaboration of the center funded under this priority with this program.

Discussion: NIDRR agrees that SAMHSA's Best Practices Planning and Implementation Grants program may be a potential source of information for, or potential collaborator of, the center funded under this priority. NIDRR typically references in its priorities only those programs or entities with which the grantee is required to collaborate. In this case, NIDRR does not believe it is appropriate to require all applicants to propose to collaborate with this SAMHSA program. For this reason, NIDRR declines to reference the SAMHSA program in the text of this priority.

Changes: None.

Note: This notice does not solicit applications. In any year in which we choose to use these final priorities, we invite applications through a notice in the **Federal Register**. When inviting applications we designate each priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the competitive preference priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive preference priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the invitational priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

This notice of final priorities (NFP) is in concert with President George W. Bush's New Freedom Initiative (NFI) and NIDRR's Final Long-Range Plan for FY 2005–2009 (Plan). Background information on the NFI can be accessed on the Internet at the following site: *http://www.whitehouse.gov/infocus/newfreedom*.

The Plan, which was published in the **Federal Register** on February 15, 2006 (71 FR 8165), can be accessed on the Internet at the following site: *http://www.ed.gov/about/offices/list/osers/nidrr/policy.html*.

Through the implementation of the NFI and the Plan, NIDRR seeks to: (1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) determine best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) identify research gaps; (5) identify mechanisms of integrating research and practice; and (6) disseminate findings.

Priorities

In this notice, we are announcing four priorities for RRTCs.

- Priority 1—Enhancing the Functional and Employment Outcomes of Individuals Who Experience a Stroke.
- Priority 2—Enhancing the Functional and Employment Outcomes of Individuals With Multiple Sclerosis.
- Priority 3—Aging With Physical Disability: Reducing Secondary Conditions and Enhancing Health and Participation, Including Employment.
- Priority 4—Participation and Community Living for Individuals With Psychiatric Disabilities.

Rehabilitation Research and Training Centers (RRTCs)

The purpose of the RRTC program is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended, through advanced research, training, technical assistance, and dissemination activities in general problem areas, as specified by NIDRR. Such activities are designed to benefit rehabilitation service providers, individuals with disabilities, and the family members or other authorized representatives of individuals with disabilities. In addition, NIDRR intends to require all RRTC applicants to meet the requirements of the General Rehabilitation Research and Training Centers (RRTC) Requirements priority, which was published in a notice of final priorities in the **Federal Register** on February 1, 2008 (73 FR 6132). Additional information on the RRTC program can be found at: *http://www.ed.gov/rschstat/research/pubs/res-program.html#RRTC*.

Statutory and Regulatory Requirements of RRTCs

RRTCs must—

- Carry out coordinated advanced programs of rehabilitation research;
- Provide training, including graduate, pre-service, and in-service training, to help rehabilitation personnel more effectively provide rehabilitation services to individuals with disabilities;
- Provide technical assistance to individuals with disabilities, their representatives, providers, and other interested parties;
- Demonstrate in their applications how they will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds;
- Disseminate informational materials to individuals with disabilities, their representatives, providers, and other interested parties; and
- Serve as centers of national excellence in rehabilitation research for individuals with disabilities, their representatives, providers, and other interested parties.

Priorities

Priority 1—Enhancing the Functional and Employment Outcomes of Individuals Who Experience a Stroke

The Assistant Secretary for Special Education and Rehabilitative Services announces a priority for a Rehabilitation Research and Training Center (RRTC) on Enhancing the Functional and Employment Outcomes of Individuals Who Experience a Stroke. This RRTC must conduct rigorous research, training, technical assistance, and dissemination activities to enhance the functional and employment outcomes of individuals who experience a stroke.

In doing so, the RRTC must focus on no more than two of the following dimensions: Improved mobility, secondary conditions (e.g., pain, fatigue), and emotional well-being. Under this priority, the RRTC must be designed to contribute to the following outcomes:

(a) Improved outcome measures for use with individuals who experience a stroke. The RRTC must contribute to this outcome by identifying or developing and testing methods and measures to assess outcomes in the dimensions that the RRTC chooses to focus on (e.g., mobility, secondary conditions, emotional well-being).

(b) Improved medical rehabilitation or community-based rehabilitation interventions for individuals who experience a stroke. The RRTC must contribute to this outcome by identifying or developing and testing new rehabilitation interventions that are designed to improve mobility, reduce the onset of secondary conditions, or improve emotional well-being among individuals who experience a stroke. Where possible, the RRTC must use scientifically based research (as this term is defined in section 9101(37) of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001) methods to test these interventions.

(c) Improved employment outcomes among individuals who experience a stroke. The RRTC must contribute to this outcome by conducting research on the experiences and outcomes of individuals who experience a stroke and who seek to return to work. The RRTC's research must include research on individuals who are served by the State Vocational Rehabilitation (VR) Services program or who receive stroke/neuro-rehabilitation services from other sources, and must identify neuro-rehabilitation services that are associated with positive outcomes in the treatment of specific stroke-related impairments and functional limitations thereby allowing individuals to return to work.

Priority 2—Enhancing the Functional and Employment Outcomes of Individuals With Multiple Sclerosis

The Assistant Secretary for Special Education and Rehabilitative Services announces a priority for a Rehabilitation Research and Training Center (RRTC) on Enhancing the Functional and Employment Outcomes of Individuals With Multiple Sclerosis. This RRTC must conduct rigorous research, training, technical assistance, and dissemination activities to enhance the functional and employment outcomes of individuals with multiple sclerosis (MS).

In doing so, the RRTC must focus on how one or both of the following dimensions affect the employment outcomes of individuals with MS: The prevention or reduction of secondary conditions (e.g., pain, fatigue, depression, cognitive impairment) and improved mobility. Under this priority, the RRTC must be designed to contribute to the following outcomes:

(a) Improved outcome measures for use with individuals with MS. The RRTC must contribute to this outcome by identifying or developing and testing methods and measures to assess outcomes in the dimensions on which the RRTC chooses to focus.

(b) Improved medical rehabilitation or community-based rehabilitation interventions. The RRTC must contribute to this outcome by improving the ability of individuals with MS to remain in the workforce and to participate in the community through identifying or developing and testing new rehabilitation interventions. Where possible, the Center must use scientifically based research (as this term is defined in section 9101(37) of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001) methods to test these interventions.

(c) Improved employment outcomes among individuals with MS. The RRTC must contribute to this outcome by conducting research on the experiences and outcomes of individuals with MS who are served by the State Vocational Rehabilitation Services (VR) program or who receive MS-rehabilitation services from other sources, and by identifying rehabilitation services that are associated with the reduction of specific MS-related symptoms and functional limitations. Research must include investigation of job modifications and accommodations associated with successful employment.

Priority 3—Aging With Physical Disability: Reducing Secondary Conditions and Enhancing Health and Participation, Including Employment

The Assistant Secretary for Special Education and Rehabilitative Services announces a priority for a Rehabilitation Research and Training Center (RRTC) on Aging With Physical Disability: Reducing Secondary Conditions and Enhancing Health and Participation, Including Employment. This RRTC must conduct rigorous research, training, technical assistance, and dissemination activities to improve rehabilitation outcome measures and rehabilitation interventions that can be applied in clinical or community-based settings and used by other researchers. The intended outcome of the RRTC is to enhance community participation, including employment, of individuals aging with long-term physical disabilities by advancing knowledge about the identification, assessment, treatment, and improved management of the secondary conditions likely experienced by individuals aging with a physical disability. Individuals aging with a physical disability include those who acquired their disability at birth, in childhood, or in early adulthood and who are now aging into middle or late adulthood.

In addressing this priority, the RRTC must propose a limited number of high-quality, cross-disability research projects to address the secondary conditions that are most relevant to the lives of individuals with physical disabilities. To ensure the feasibility of the RRTC's proposed activities and increase the likelihood of achieving the planned outcomes, the RRTC must focus on two to four discrete impairment groups (e.g., spinal cord injury, cerebral palsy, multiple sclerosis, rheumatoid arthritis, stroke, post-polio) and must limit intervention strategies to no more than two of the following modalities: exercise, health promotion, psychological adaptation, life planning or self-management skills, and environmental or technological supports. Under this priority, the RRTC must be designed to contribute to the following outcomes:

(a) Enhanced understanding of the natural course of aging with a physical disability. The RRTC must contribute to this outcome by documenting the life trajectories and average age of onset of the major types of secondary conditions experienced by individuals living with long-term physical disabilities in the selected impairment groups, and examining the interrelationships among different types of secondary conditions

and the consequences of variations in timing of onset for health and community participation.

(b) Improved tools and measures for use with individuals aging with long-term physical disabilities. The RRTC must contribute to this outcome by identifying, developing or modifying, and testing measurement tools that improve the identification and assessment of the major types of secondary conditions affecting individuals in the selected impairment groups, as well as the outcomes of interventions designed to prevent or reduce these conditions.

(c) Improved rehabilitation or community-based interventions that enhance the health and participation in work and the community of individuals aging with physical disabilities. The RRTC must contribute to this outcome by identifying, developing or modifying, and testing interventions that show promise in preventing the onset of or improving the management and reducing the impact of secondary conditions on individuals in the selected impairment groups. Where possible, the RRTC must use scientifically based research (as this term is defined in section 9101(37) of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001) methods to test these interventions.

(d) Improved employment outcomes among working-age individuals aging with long-term physical disabilities. The RRTC must contribute to this outcome by conducting research on the experiences, including employment outcomes, of individuals aging with long-term physical disabilities in the selected impairment groups who are served by the State Vocational Rehabilitation (VR) Services program or who receive rehabilitation services from other sources, and by identifying specific secondary conditions that require improved and unique VR services and approaches.

Priority 4—Participation and Community Living for Individuals With Psychiatric Disabilities

The Assistant Secretary for Special Education and Rehabilitative Services announces a priority for a Rehabilitation Research and Training Center (RRTC) on Participation and Community Living for Individuals With Psychiatric Disabilities. The RRTC must conduct rigorous research, training, technical assistance, and dissemination activities that contribute to improved community participation and community living outcomes for individuals with psychiatric disabilities. Under this priority, the RRTC must be designed to contribute to the following outcomes:

(a) Improved individual and system capacity to maximize the participation of individuals with psychiatric disabilities in community life. The RRTC must contribute to this outcome by:

(1) Generating new knowledge through research on effective strategies to meet the needs of individuals with psychiatric disabilities who are served by centers for independent living and identifying independent living services and service-delivery approaches that meet the unique needs of this population.

(2) Increasing the knowledge base and advancing the application of theories, measures, methods, or interventions that facilitate participation and community living of individuals with psychiatric disabilities. In this regard, the RRTC must focus its efforts on at least three of the following areas: Employment, housing, education, health and mental health care, recreation, social relationships, or other public and private sector activities related to community living. If the RRTC engages in testing interventions, the RRTC must use scientifically based research (as this term is defined in section 9101(37) of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001) methods.

(3) Reducing disparities in service delivery and program development by focusing its work on one or more of the following understudied areas: (i) Emergency preparedness for individuals with psychiatric disabilities; (ii) individuals with psychiatric disabilities from diverse racial, ethnic, and linguistic backgrounds; or (iii) individuals with psychiatric disabilities who have co-occurring sensory or physical disabilities.

(b) Increased incorporation of mental health research findings into practice or policy. The RRTC must contribute to this outcome by coordinating with appropriate NIDRR-funded knowledge translation grantees to advance or add to their work in the following areas:

(1) Developing and implementing procedures to evaluate the readiness of mental health research findings for translation into practice.

(2) Collaborating with stakeholder groups to develop, evaluate, or implement strategies to increase utilization of mental health research findings.

(3) Conducting training, technical assistance, and dissemination activities to increase utilization of mental health research findings.

Information on knowledge translation projects funded by NIDRR can be found at *http://www.naric.com/research/pd/priority.cfm*.

Executive Order 12866

This NFP has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with this NFP are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this NFP, we have determined that the benefits of the final priorities justify the costs.

Summary of Potential Costs and Benefits

The benefits of the Disability and Rehabilitation Research Projects and Centers Programs have been well established over the years in that similar projects have been completed successfully. These final priorities will generate new knowledge and technologies through research, development, dissemination, utilization, and technical assistance projects.

Another benefit of these final priorities is that the establishment of new RRTCs will support the President's NFI and improve the lives of individuals with disabilities. The new RRTCs will generate, disseminate, and promote the use of new information that will improve employment and community living options for individuals with disabilities.

Applicable Program Regulations: 34 CFR part 350.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents 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*.

(Catalog of Federal Domestic Assistance Numbers 84.133B Rehabilitation Research and Training Centers Program)

Program Authority: 29 U.S.C. 762(g) and 764(b)(2).

Dated: July 2, 2008.

Tracy R. Justesen,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E8–15503 Filed 7–7–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

President's Board of Advisors (Board), The White House Initiative on Tribal Colleges and Universities (WHI/TCU) Meeting

AGENCY: The White House Initiative on Tribal Colleges and Universities, Department of Education.

ACTION: Notice of An Open Meeting.

SUMMARY: This purpose of this notice is to announce an open meeting of the President's Board of Advisors (Board), The White House Initiative on Tribal Colleges and Universities (WHI/TCU) on Tuesday, July 15, 2008, 1 p.m. to 5 p.m., at the Navajo Technical College, Lower Point Road, Crownpoint, New Mexico 87313; and, on Wednesday, July 16, 2008, 9 a.m. to 3 p.m., at Southwestern Indian Polytechnic Institute, 9169 Coors Road, NW., Albuquerque, New Mexico 87184. This notice sets forth the schedule and proposed agenda of the upcoming meeting of the President's Board of Advisors on Tribal Colleges and Universities. This notice also describes the functions of the Board. Notice of this meeting is required by Section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of its opportunity to attend.

DATES AND TIMES: Tuesday, July 15, 2008, 1 p.m. to 5 p.m., and Wednesday, July 16, 2008, 9 a.m. to 3 p.m.

ADDRESSES: Tuesday, July 15, 2008, 1 p.m. to 5 p.m., Navajo Technical College, Lower Point Road, Crownpoint, New Mexico 87313; and, on Wednesday, July 16, 2008, 9 a.m. to 3 p.m., at Southwestern Indian Polytechnic Institute, 9169 Coors Road, NW., Albuquerque, New Mexico 87184.

FOR FURTHER INFORMATION CONTACT: Anselm Davis, Executive Director, White House Initiative on Tribal Colleges and Universities, 1990 K Street, NW., Room 7014, Washington, DC 20006; Telephone: 202–219–7040; Fax: 202–219–7086.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The President's Board of Advisors on Tribal Colleges and Universities was established under Executive Order 13270, dated July 3, 2002, and Executive Order 13446, dated September 28, 2007. The Board was established: (a) To report to the President annually on the results of the participation of Tribal Colleges and Universities in Federal programs, including recommendations on how to increase the private sector role, including the role of private foundations, in strengthening these institutions, with particular emphasis also given to enhancing institutional planning and development, strengthening fiscal stability and financial management, and improving institutional infrastructure, including the use of technology, to ensure the long-term viability and enhancement of these institutions; (b) to advise the President and the Secretary of Education (Secretary) on the needs of TCUs in the areas of infrastructure, academic programs, and faculty and institutional development; (c) to advise the Secretary in the preparation of a three-year Federal plan for assistance to TCUs in increasing their capacity to participate in Federal programs; (d) to provide the President with an annual progress report on enhancing the capacity of TCUs to serve their students; and (e) to develop, in consultation with the Department of Education and other Federal agencies, a private sector strategy to assist TCUs.

The purpose of the meeting is to update and document the Board's Action Agenda through a review of collaborative efforts, to review the final draft of the Fiscal Year 2006 Report to the President, and to discuss relevant issues to be addressed as the Board pursues opportunities to strengthen capacity of programs at the Tribal Colleges and Universities.

Additional Information: Individuals who will need accommodations for a disability in order to attend the meeting (e.g., interpreting services, assistive listening devices, or material in alternative format) should notify Tonya Ewers 1990 K Street, NW., Washington, DC 20006, Telephone: 202–219–7040, no later than July 10, 2008. We will attempt to meet requests for accommodations after this date, but we cannot guarantee their availability. The meeting sites are accessible to individuals with disabilities.

An opportunity for public comment is available on Tuesday, July 15, 2008, between 2:15 p.m. and 2:45 p.m. Comments will be limited to five (5) minutes for those who sign up to speak. Those members of the public interested in submitting written comments may do so by submitting them to Tonya Ewers, 1990 K Street, NW., Washington, DC 20006, by Thursday, July 10, 2008.

Records are kept of all Board proceedings and are available for public inspection at the Office of the White House Initiative on Tribal Colleges and Universities, U.S. Department of Education, 1990 K Street, NW., Washington, DC 20006, during the hours of 8 a.m. to 5 p.m., Eastern Standard Time, Monday through Friday.

Electronic Access to this Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF), on the Internet at the following site: *http://www.ed.gov/news/federegister.*

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 at GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Sara Martinez Tucker,

Under Secretary.

[FR Doc. E8–15394 Filed 7–7–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services Overview Information; National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Rehabilitation Research and Training Centers (RRTCs); Notice Inviting Applications for New Awards for Fiscal Year (FY) 2008

Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.133B–7, 84.133B–8, 84.133B–9, and 84.133B–10.

Note: This notice invites applications for four separate competitions. For key dates, contact person information, and funding information regarding each of the four competitions, see the chart in the *Award Information* section of this notice.

DATES: *Applications Available:* See chart.

Date of Pre-Application Meeting: See chart.

Deadline for Transmittal of Applications: See chart.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the RRTC program is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended, through advanced research, training, technical assistance, and dissemination activities in general problem areas, as specified by NIDRR. Such activities are designed to benefit rehabilitation service providers, individuals with disabilities, and the family members or other authorized representatives of individuals with disabilities.

Additional information on the RRTC program can be found at: *http://www.ed.gov/rschstat/research/pubs/res-program.html#RRTC*.

Priorities: NIDRR has established five separate priorities for the four competitions announced in this notice. The General RRTC Requirements priority, which applies to all RRTC competitions, is from the notice of final priorities (NFP) for the Disability and Rehabilitation Research Projects and Centers Program, published in the **Federal Register** on February 1, 2008 (73 FR 6132). The remaining four priorities are from the NFP for the Disability and Rehabilitation Research Projects and Centers Program, published elsewhere in this issue of the **Federal Register**.

Absolute Priorities: For FY 2008, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3), for each competition (designated by CFDA number in the following chart), we consider only applications that meet both the General RRTC Requirements priority and the absolute priority designated for that competition.

These priorities are:

Absolute priority	Corresponding competition CFDA No.
General RRTC Requirements	84.133B–7, 84.133B–8, 84.133B–9, 84.133B–10.
Enhancing the Functional and Employment Outcomes of Individuals Who Experience a Stroke.	84.133B–7.
Enhancing the Functional and Employment Outcomes of Individuals With Multiple Sclerosis	84.133B–8.
Aging With Physical Disability: Reducing Secondary Conditions and Enhancing Health and Participation, Including Employment.	84.133B–9.
Participation and Community Living for Individuals With Psychiatric Disabilities	84.133B–10.

Note: The full text of each of these priorities is included in its notice of final priorities in the **Federal Register** and in the applicable application package.

Program Authority: 29 U.S.C. 762(g) and 764(b)(2).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, and 97. (b) The regulations for this program in 34 CFR part 350. (c) The NFP for the Disability and Rehabilitation Research Projects and Centers program, published in the **Federal Register** on February 1, 2008 (73 FR 6132). (d) The NFP for the Disability and Rehabilitation Research Projects and Centers program, published elsewhere in this issue of the **Federal Register**.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $7,650,000.

Maximum Award: See chart.

Estimated Number of Awards: See chart.

Project Period: See chart.

REHABILITATION RESEARCH AND TRAINING CENTERS APPLICATION NOTICE FOR FISCAL YEAR 2008

CFDA number and name	Applications available	Deadline for transmittal of applications	Date of pre-application meeting	Estimated average size of awards	Maximum award*	Estimated number of awards	Project period	Contact person
84.133B–7 Enhancing the Functional and Employment Outcomes of Individuals Who Experience a Stroke.	07/08/2008	08/22/2008	07/29/08	$850,000	*$850,000	1	Up to 60 mos.	Donna Nangle (202) 245–7462 Rm 6029.
84.133B–8 Enhancing the Functional and Employment Outcomes of Individuals With Multiple Sclerosis.	.....	.....	07/29/08	850,000	*850,000	1	Up to 60 mos.	

REHABILITATION RESEARCH AND TRAINING CENTERS APPLICATION NOTICE FOR FISCAL YEAR 2008—Continued

CFDA number and name	Applications available	Deadline for transmittal of applications	Date of pre-application meeting	Estimated average size of awards	Maximum award*	Estimated number of awards	Project period	Contact person
84.133B–9 Aging With Physical Disability: Reducing Secondary Conditions and Enhancing Health and Participation, Including Employment.	.....	.....	07/29/08	850,000	*850,000	1	Up to 60 mos.	
84.133B–10 Participation and Community Living for Individuals With Psychiatric Disabilities.	.....	.....	07/29/08	850,000	*850,000	1	Up to 60 mos.	

III. Eligibility Information

1. *Eligible Applicants:* States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; IHEs; and Indian tribes and tribal organizations.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.html.*

To obtain a copy from ED Pubs, write, fax, or call the following: Education Publications Center, 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 from ED Pubs, be sure to identify the competition to which you want to apply, as follows: CFDA number 84.133B–7, 84.133B–8, 84.133B–9, or 84.133B–10.

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 each competition announced in this notice.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you limit Part III to the equivalent of no more than 125 pages for each competition, using the following standards:

- A ''page'' is 8.5″ × 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative. Single spacing may be used for titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The recommended page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the recommended page limit does apply to all of the application narrative section (Part III).

The application package will provide instructions for completing all components to be included in the application. Each application must include a cover sheet (Standard Form 424); budget requirements (ED Form 524) and a narrative budget justification; other required forms; an abstract, Human Subjects narrative, Part III narrative; resumes of staff; and other related materials, if applicable.

3. *Submission Dates and Times:*

Applications Available: See chart.

Date of Pre-Application Meeting: Interested parties are invited to participate in any of the pre-application meetings held for the competitions announced in this notice and to receive information and technical assistance through individual consultation with NIDRR staff. The dates for each of the competitions' pre-application meetings are listed in the chart in the *Award Information* section in this notice. Interested parties may participate in these meetings on the dates listed in the chart by conference call with NIDRR staff from the Office of Special Education and Rehabilitative Services between 10 a.m. and 12 p.m., Washington, DC, time. For each meeting, NIDRR staff also will be available from 1:30 p.m. to 3:30 p.m., Washington, DC, time, on the same day, by telephone, to provide information and technical assistance through individual consultation. For further

information or to make arrangements to participate in any of these meetings via conference call or for an individual consultation, contact Donna Nangle, U.S. Department of Education, Potomac Center Plaza (PCP), room 6029, 550 12th Street, SW., Washington, DC 20202. Telephone: (202) 245–7462 or by e-mail: *Donna.Nangle@ed.gov*.

Deadline for Transmittal of Applications: See chart.

Applications for grants under this program 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.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

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 the competitions announced in this notice 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 RRTC competitions (CFDA numbers 84.133B–7, 84.133B–8, 84.133B–9, and 84.133B–10) 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 RRTC competitions (CFDA numbers 84.133B–7, 84.133B–8, 84.133B–9, and 84.133B–10) at *http://www.Grants.gov*. You must search for the downloadable application package for the competition to which you are applying by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.133, not 84.133B).

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 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. 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 4:30:00 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 the competition to which you are applying 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 4:30:00 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 4:30:00 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 4:30:00 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: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 6029, PCP, Washington, DC 20202–2700. FAX: (202) 245–7323.

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 84.133B–7, 84.133B–8, 84.133B–9, or 84.133B–10), 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 84.133B–7, 84.133B–8, 84.133B–9, or 84.133B–10), 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 84.133B–7, 84.133B–8, 84.133B–9, or 84.133B–10), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 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

1. *Selection Criteria:* The selection criteria for the competitions announced in this notice are from 34 CFR 350.54 and are listed in the application package.

2. *Review and Selection Process:* Additional factors we consider in determining the merits of an application are as follows—

The Secretary is interested in outcomes-oriented research or development projects that use rigorous scientific methodologies. To address this interest, applicants are encouraged to articulate goals, objectives, and expected outcomes for the proposed research or development activities. Proposals should describe how results and planned outputs are expected to contribute to advances in knowledge, improvements in policy and practice, and public benefits for individuals with disabilities. Applicants should propose projects that are designed to be consistent with these goals. We encourage applicants to include in their application a description of how results will measure progress towards achievement of anticipated outcomes (including a discussion of the proposed measures of effectiveness), the mechanisms that will be used to evaluate outcomes associated with specific problems or issues, and how the proposed activities will support new intervention approaches and strategies. Submission of the information identified in this section V.2. *Review and Selection Process* is voluntary, except where required by the selection criteria 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 Notice (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.*

Note: NIDRR will provide information by letter to grantees on how and when to submit the final performance report.

4. *Performance Measures:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through a review of grantee performance and products. Each year, NIDRR examines a portion of its grantees to determine:

- The percentage of newly awarded NIDRR projects that are conducting at least one multi-site, collaborative controlled trial of interventions and programs.
- The number of accomplishments (e.g., new or improved tools, methods, discoveries, standards, interventions, programs, or devices) developed or tested with NIDRR funding that have been judged by expert panels to be of high quality and to advance the field.
- The average number of publications per award based on NIDRR-funded research and development activities in refereed journals.
- The percentage of new grants that include studies funded by NIDRR that assess the effectiveness of interventions, programs, and devices using rigorous and appropriate methods.

NIDRR uses information submitted by grantees as part of their Annual Performance Reports (APRs) in support of these performance measures.

Updates on the Government Performance and Results Act of 1993 (GPRA) indicators, revisions, and methods appear on the NIDRR Program Review Web site: *http://www.neweditions.net/pr/commonfiles/pmconcepts.htm.*

Grantees should consult these sites on a regular basis to obtain details and explanations on how NIDRR programs contribute to the advancement of the Department's long-term and annual performance goals.

VII. Agency Contact

For Further Information Contact: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 6029, PCP, Washington, DC 20202. Telephone: (202) 245–7462 or by e-mail: *Donnna.Nangle@ed.gov.*

If you use a TDD, call the Federal Relay Service (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: July 2, 2008.

Tracy R. Justesen,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E8–15506 Filed 7–7–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Number: 459–224]

Ameren/UE; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

June 27, 2008.

a. *Type of Application:* Non-project use of project lands and waters.

b. *Project Number:* 459–224.

c. *Date Filed:* June 10, 2008.

d. *Applicant:* Ameren/UE.

e. *Name of Project:* Osage Hydroelectric Project.

f. *Location:* The project is located at the Lakeside at Cross Creek development near mile markers 30.9+1.5 to 30.9+2 of the Linn Creek Cove of the Lake of the Ozarks, in Camden County, Missouri.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a), 825(r) and 799 and 801.

h. *Applicant Contact:* Mr. Jeff Green, Shoreline Supervisor, Ameren/UE, P.O. Box 993, Lake Ozark, MO 65049, (573)–365–9214.

i. *FERC Contact:* Any questions on this notice should be addressed to Christopher Yeakel at (202) 502–8132, or e-mail address: *christopher.yeakel*@ferc.gov.

j. *Deadline for Filing Comments and/or Motions:* July 28, 2008.

k. *Description of Request:* Ameren/UE requests approval to permit VOC Investments, LLC, to construct 20 new multi-slip boat docks at the Lakeside at Cross Creek development. The docks would have a total of 435 boat slips ranging from 32 feet long and 12 feet wide to 48 feet long and 16 feet wide and would include central walkways 6 feet wide. The docks would be available to the residents of the Lakeside at Cross Creek development. The shoreline is currently undeveloped. No dredging, fuel dispensing, or sewage pumping facilities are proposed.

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 (p–459) 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 1–866–208–3372 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions To Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .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. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers (p–459–224). All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

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. E8–15218 Filed 7–7–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP08–430–000]

Transcontinental Gas Pipe Line Corporation; Notice of Amendment Application

July 1, 2008.

On June 23, 2008, Transcontinental Gas Pipe Line Corporation (Transco), 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. The requested amendment, the Eminence Enhancement Project, would add an additional 4,735 horsepower compressor unit and appurtenant facilities to provide enhanced injection rights to nine customers participating in the Eminence salt dome Storage Field in Covington County, Mississippi. The Eminence Enhancement Project would cost $19.3 million. So that the facilities are available to meet user timing needs, Transco requests Commission issuance of the necessary authorizations by February 1, 2009.

Questions concerning this application should be directed to Ingrid Germany at Transcontinental Gas Pipe Line Corporation, P.O. Box 1396, Houston, Texas 77251 or by calling 713–215–4015.

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 July 22, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–15428 Filed 7–7–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL08–72–000]

NRG Energy, Inc., Complainants, v. Entergy Services, Inc., Respondent; Notice of Complaint

June 30, 2008.

Take notice that on June 27, 2008, NRG Energy, Inc. and its affiliated companies, (collectively, NRG) pursuant to sections 206 and 306 of the Federal Power Act, 16 U.S.C. 824e and 825e (2000) and Rules 206 and 306 of the Commission's Rules of Practice and Procedure, 18 CFR 385.206 and 386.306 (2008), submit this complaint against Entergy Services, Inc. (Entergy), alleging that Entergy's May 30, 2008 annual transmission rate filing includes bonus compensation paid to Entergy employees that should not be passed on to it transmission service customers.

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 Respondent's answer, 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 answer, 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 July 17, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–15425 Filed 7–7–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RC08–1–001]

Southeastern Power Administration; Notice of Filing

July 1, 2008.

Take notice that on June 20, 2008, the North American Electric Reliability Corporation (NERC) filed a decision addressing the Commission's February 21, 2008 decision in this proceeding remanding a NERC registry decision involving the Southeastern Power Administration (SEPA) for either reconsideration or further explanation.[1] On remand NERC states that it has affirmed SERC Reliability Corporation's (SERC) decision to remove the function of Resource Planner from the NERC Compliance Registry for SEPA. NERC states that it has affirmed SERC's decision to retain SEPA's registration as a Transmission Operator. However, NERC states that it has also directed SERC to evaluate and determine whether the Army Corps of Engineers should be co-registered with SEPA as a Transmission Operator.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on July 21, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–15424 Filed 7–7–08; 8:45 am]

BILLING CODE 6717–01–P

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[1] *Southeastern Power Administration,* 122 FERC ¶ 61,140 (2008).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[P–2101–084–CA]

Sacramento Municipal Utility District; Notice of Meeting

July 1, 2008.

a. *Project:* Upper American River Hydroelectric Project, El Dorado County, California.

b. *Date and Time of Meeting:* Thursday, July 17, 2008, 2 p.m. to 4 p.m. (PST).

c. *Place:* 2800 Cottage Way, Suite W–2605, Sacramento, California 95825. By copy of this notice, we are also inviting all interested parties to attend a teleconference from their location.

d. *FERC Contact:* Alan Mitchnick, (202) 502–6074, *alan.mitchnick@ferc.gov.*

e. *Purpose of the Meeting:* On September 25, 2007, the Commission requested formal consultation under the Endangered Species Act with the U.S. Fish and Wildlife Service (FWS) on relicensing of the project. On December 13, 2007, FWS indicated that the Commission must evaluate the effects on listed species of the recently signed water storage agreement between the Sacramento Municipal Utility District (SMUD) and El Dorado County et al. The Commission staff will be meeting with FWS and SMUD to discuss this issue.

f. All local, state, and federal agencies, and interested parties, are hereby invited to attend the meeting or listen in on the teleconference. The meeting location and phone number and passcode to the teleconference will be provided upon a request made by interested parties. Please make that request to Alan Mitchnick via e-mail at *alan.mitchnick@ferc.gov* NO LATER THAN close of business Tuesday, July 14, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–15427 Filed 7–7–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. IN06–3–003; IN06–3–004]

Energy Transfer Partners, L.P.; Energy Transfer Company; ETC Marketing Ltd.; Houston Pipeline Company; Oasis Pipeline, L.P.; Oasis Pipeline Company Texas, L.P.; ETC Texas Pipeline Ltd., Oasis Division; Supplemental Notice of Designation of Commission Staff

July 1, 2008.

On December 20, 2007, a notice was issued designating the staff of the Office of Enforcement as non-decisional in deliberations by the Commission in this docket, with certain limited exceptions. Exceptions to this designation are the Director of the Office of Enforcement and the Directors of the Divisions of Investigations, Energy Market Oversight, Audits, and Financial Regulation in the Office of Enforcement, and Shauna Coleman.[1] This supplemental notice designates Christopher Ellsworth, an energy industry analyst in the Division of Market Oversight, Office of Enforcement, as an exception to the designation of the staff of the Office of Enforcement as non-decisional. Mr. Ellsworth joined the Commission after the December 27, 2007 notice was issued and did not participate in the investigation at issue in this proceeding.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–15426 Filed 7–7–08; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OW–2008–0357, FRL–8688–8]

Agency Information Collection Activities: Proposed Collection; Comment Request; Reporting Requirements for BEACH Act Grants, EPA ICR Number 2048.01, OMB Control Number 2040–0244

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request to renew an existing approved collection. This ICR is scheduled to expire on July 25, 2008. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before September 8, 2008.

ADDRESSES: Submit your comments, referencing docket ID number OW–2008–0357, to EPA online at Regulations.gov using the Comment or Submission function (our preferred method), by hand delivery to the EPA Docket Center (EPA/DC) EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC (during normal hours of operation), or by mail to: EPA Docket Center, Environmental Protection Agency, Water Docket (2822T), 1200 Pennsylvania Ave., NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Lars Wilcut, Standards and Health Protection Division, Office of Science and Technology (4305T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 566–0447; fax number: (202) 566–0409; e-mail address: *wilcut.lars@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number OW–2008–0357, which is available for public viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. An electronic version of the public docket is available through the Regulations.gov Web site (*http://www.regulations.gov/*). Use Regulations.gov to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, then key in the docket ID number identified above in the Comment or Submission field. Any comments related to this ICR should be submitted to EPA within 60 days of this notice.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public

[1] See March 3, 2008 Supplemental Notice in Docket No. IN06–3–003.

viewing on Regulations.gov without change as they are received by EPA, with the exception of comments containing copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed on Regulations.gov. The entire printed comment, including the copyrighted material, will be available in the public docket. For those comments containing information claimed as CBI, or information otherwise restricted by statute, that material will be identified as an item in the official docket but will not be included in the official public docket or available for public viewing on Regulations.gov. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or online at: *http://www.regulations.gov*.

Affected entities: Entities potentially affected by this action are those coastal and Great Lakes state, local, and tribal governments which are eligible for BEACH Act grants. These are governments that develop and implement programs for the monitoring and notification of coastal (marine and Great Lakes) recreation waters adjacent to beaches or similar points of access that are used by the public.

Title: Reporting Requirements for BEACH Act Grants.

Abstract: Congress passed the Beaches Environmental Assessment and Coastal Health (BEACH) Act in October 2000 to amend the Clean Water Act, in part by adding Section 406, ''Coastal Recreation Water Monitoring and Notification.''

Section 406(b) authorizes EPA to make grants to state and local governments to develop and implement programs for the monitoring and public notification of coastal recreation waters adjacent to beaches or similar points of access that are used by the public upon satisfaction of the requirements of the BEACH Act. The Section obligates a grant recipient to collect and submit information to EPA as a condition for receiving the grant. Specific provisions of 406(b) include the requirements that a grant recipient submit the factors used to prioritize funds and a list of waters for which the grant funds will be used, and that a grant recipient's program be consistent with the performance requirements set by EPA under section 406(a). EPA needs this information from the grant recipients to determine if their monitoring and notification programs are consistent with these criteria. On July 19, 2002, EPA published the National Beach Guidance and Required Performance Criteria for Grants (67 FR 47540). Section 406(b) obligates grant recipients to submit a report to EPA describing the data collected as part of a monitoring and notification program and the actions taken to notify the public when water quality standards are exceeded.

Section 406(c) requires a grant recipient to identify lists of coastal recreation waters, processes for states to delegate the responsibility for implementing a monitoring and notification program to local governments, and the content of the monitoring and notification program.

The information encompassed by this ICR is required of states and local governments that seek to obtain BEACH Act funding. It allows EPA to properly review state and local governments' monitoring and notification programs to determine if they are eligible for BEACH Act grant funding, and enables EPA to fulfill its obligations to make this information available to the public under Sections 406(e) and (g).

An agency may not conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 1,993 hours per grant recipient per year. This burden represents a report and accompanying data to be are submitted each year by the 40 eligible states and territories. In subsequent years, authorized tribes and local governments may also become eligible for BEACH Act grants. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to: (1) Review instructions; (2) develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; (3) adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; (4) search data sources; (5) complete and review the collection of information; and (6) transmit or otherwise disclose the information.

Dated: July 1, 2008.

Ephraim King,

Director, Office of Science and Technology.

[FR Doc. E8–15439 Filed 7–7–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8688–6]

Motorola 52nd Street Superfund Site; Proposed Notice of Administrative Settlement Based on a Limited Ability To Pay at the Motorola 52nd Street Superfund Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; Request for Public Comment.

SUMMARY: Notice is hereby given that a proposed Administrative Settlement (''Agreement'') based on limited ability to pay for a potential source facility at the Motorola 52nd Street Superfund Site in Phoenix, Arizona (''52nd Street Site'' or ''Site''). The Agreement has been negotiated by the United States Environmental Protection Agency (''EPA'') and the owner and operator of the potential source facility, Paul McCoys Laundry and Dry Cleaners, Inc. (''Respondent'') subject to the final review and approval of the EPA and the U.S. Department of Justice. The proposed Agreement settles Respondent's liability at the Site pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9622(h)(1) (''CERCLA''). In the Agreement, Respondent agrees to pay the EPA $26,000 representing a portion of costs incurred in response to the release or

threat of release of hazardous substances the Site. In exchange, the proposed Agreement includes EPA's covenant not to sue or to take administrative action against Respondent.

For thirty (30) calendar days following the date of publication of this notice, EPA will receive written comments relating to the proposed Agreement. EPA's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105.

DATES: Comments must be submitted on or before August 7, 2008.

Availability: The proposed Agreement may be obtained from Judith Winchell, Docket Clerk, telephone (415) 972–3124. Comments regarding the proposed Agreement should be addressed to Judith Winchell (SFD–7) at United States EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105, and should reference ''Motorola 52nd Street Superfund Site,'' and ''Docket No. R9–2008–03''.

FOR FURTHER INFORMATION CONTACT: Bethany Dreyfus, Assistant Regional Counsel (ORC–3), Office of Regional Counsel, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105; E-mail: *dreyfus.bethany@epa.gov;* phone: (415) 972–3886.

Dated: June 26, 2008.

Michael Montgomery,

Acting Director, Superfund Division, Region IX.

[FR Doc. E8–15433 Filed 7–7–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8688–7]

Proposed Agreement Pursuant to Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act for the Wabash Environmental Technologies Site

AGENCY: Environmental Protection Agency (''EPA'').

ACTION: Notice; Request for public comment on proposed CERCLA 122(h)(1) agreement with Heidtman Steel Products, Inc.; Marathon Petroleum Company LLC; and Perma-Fix Environmental Services, Inc. for the Wabash Environmental Technologies Superfund Site.

SUMMARY: In accordance with section 122(i)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1984, as amended (''CERCLA''), notification is hereby given of a proposed administrative agreement concerning the Wabash Environmental Technologies hazardous waste site in Terre Haute, Indiana (the ''Site''). EPA proposes to enter into this agreement under the authority of section 122(h) and 107 of CERCLA. The proposed agreement has been executed by Heidtman Steel Products, Inc.; Marathon Petroleum Company LLC; and Perma-Fix Environmental Services, Inc. (the ''Settling Parties'').

Under the proposed agreement, the Settling Parties will pay $200,000 to the Hazardous Substances Superfund to resolve EPA's claims against them for response costs incurred by EPA at the Site. EPA has incurred response costs investigating and performing response actions at the Site to mitigate potential imminent and substantial endangerments to human health or the environment presented or threatened by hazardous substances present at the Site.

For thirty days following the date of publication of this notice, the EPA will receive written comments relating to this proposed agreement. EPA will consider all comments received and may decide not to enter this proposed agreement if comments disclose facts or considerations which indicate that the proposed agreement is inappropriate, improper or inadequate.

DATES: Comments on the proposed agreement must be received by EPA on or before August 7, 2008.

ADDRESSES: Comments should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590, and should refer to: In the Matter of Wabash Environmental Technologies Site, Terre Haute, Indiana, U.S. EPA Docket No. V–W–08C–903.

FOR FURTHER INFORMATION CONTACT: Thomas J. Krueger, U.S. Environmental Protection Agency, Office of Regional Counsel, C–14J, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590, (312) 886–0562.

A copy of the proposed administrative settlement agreement may be obtained in person or by mail from the EPA's Region 5 Office of Regional Counsel, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590. Additional background information relating to the settlement is available for review at the EPA's Region 5 Office of Regional Counsel.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. 9601–9675.

Dated: June 26, 2008.

Richard C. Karl,

Director, Superfund Division, Region 5.

[FR Doc. E8–15434 Filed 7–7–08; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to OMB for Review and Approval, Comments Requested

July 1, 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 August 7, 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*. or *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 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: 3060–0674.

Title: Section 76.1618, Basic Tier Availability.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 8,250 respondents; 8,250 responses.

Estimated Time per Response: 2.25 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this collection of information is contained in Section 4(i) and Section 632 of the Communications Act of 1934, as amended.

Total Annual Burden: 18,563 hours.

Total Annual Cost: None.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: 47 CFR 76.1618 states that a cable operator shall provide written notification to subscribers of the availability of basic tier service to new subscribers at the time of installation. This notification shall include the following information: (a) That basic tier service is available; (b) the cost per month for basic tier service; and (c) a list of all services included in the basic service tier. These notification requirements are to ensure the subscribers are made aware of the availability of basic cable service at the time of installation.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. E8–15447 Filed 7–7–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 22, 2008.

A. Federal Reserve Bank of Chicago (Burl Thornton, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Demetris Giannoulias, Evanston, Illinois, individually and as Trustee of the Broadway DG Trust, George Giannoulias, Chicago, Illinois, individually and as Trustee of the Broadway GG Trust and the George Broadway Revocable Trust, the Broadway DG Trust, Evanston, Illinois, the Broadway GG Trust, Chicago, Illinois, and the George Broadway Revocable Trust, Chicago, Illinois, to acquire voting shares, and thereby join the existing Giannoulias Family control group, of Broadway Bancorp, Inc., and thereby indirectly acquire Broadway Bank, both of Chicago, Illinois.

Board of Governors of the Federal Reserve System, July 2, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–15416 Filed 7–7–08; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Injury Prevention and Control Initial Review Group

In accordance with section 10(a)2 of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announce the following teleconference meeting:

Name: National Center for Injury Prevention and Control (NCIPC) Initial Review Group (IRG).

Times and Date: 2 p.m.–2:30 p.m. July 15, 2008 (Open).

2:30 p.m.–4 p.m. July 15, 2008 (Closed).

Place: Centers for Disease Control and Prevention, Chamblee Campus, Building 106, 4770 Buford Highway, Atlanta, Georgia 30341. Toll Free: 888–793–2154, Participant Passcode: 4424802.

Status: Portions of the meetings will be closed to the public in accordance with provisions set forth in Sections 552b(c)(4) and (6), Title 5, U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Section 10(d) of Public Law 92–463.

Purpose: This group is charged with providing advice and guidance to the Secretary, Department of Health and Human Services, and the Director, CDC, concerning the scientific and technical merit of grant and cooperative agreement applications received from academic institutions and other public and private profit and nonprofit organizations, including State and local government agencies, to conduct specific injury research that focuses on prevention and control.

Matters To Be Discussed: The meeting will include the reconvening of the June 18, 2008 Panel for the peer review of two of the nine applications submitted in response to Fiscal Year 2008 Requests for Applications related to the following individual research announcements: RFA–CE–08–001, Youth Violence Prevention through Community-Level Change (U49); and RFA–CE–08–003, Research for Preventing Violence and Violence-Related Injury (R01). The completion of peer review of applications submitted in response to Fiscal Year 2008 Requests for Applications related to the following individual research announcements: RFA–CD–08–001, Elimination of Health Disparities through Translation Research (R18) (NCIPC); RFA–CD–08–001, Elimination of Health Disparities through Translation Research (R18) (NCEH); RFA–EH–08–002, Program to Expand State or Territorial Public Health Laboratory Capacity for Newborn Bloodspot Screening to include Severe Combined Immune Deficiency (SCID) (U01); and RFA–TS–08–003, Environmental Health and Toxicology Research Program (U01).

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Jane Suen, Ph.D., M.S., Executive Secretary,

NCIPC IRG, CDC, 4770 Buford Highway, NE., M/S F–62, Atlanta, Georgia 30341, telephone 770–488–4281.

This notice is published less than 15 days before the meeting due to administrative requirements to reschedule the meeting and to ensure that reviewers would be available on that date. The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: June 30, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8–15399 Filed 7–7–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Request for Nominations of Candidates To Serve on the Board of Scientific Counselors, National Center for Environmental Health/Agency for Toxic Substances and Disease Registry, Centers for Disease Control and Prevention, Department of Health and Human Services

The National Center for Environmental Health/Agency for Toxic Substances and Disease Registry (NCEH/ATSDR) is soliciting nominations for possible membership on the Board of Scientific Counselors. This Board provides advice and guidance to the Secretary, HHS; the Director, CDC; and the Director, NCEH/ATSDR, regarding program goals, objectives, strategies, and priorities in fulfillment of the agencies' mission to protect and promote people's health. The Board provides advice and guidance to help NCEH/ATSDR work more efficiently and effectively with its various constituents and to fulfill its mission in protecting America's health.

Nominations are being sought for individuals who have expertise and qualifications necessary to contribute to the accomplishments of the Board's objectives. Nominees will be selected from experts having experience in preventing human diseases and disabilities caused by environmental conditions. Experts in the disciplines of toxicology, epidemiology, environmental or occupational medicine, behavioral science, risk assessment, exposure assessment, and experts in public health and other related disciplines will be considered. Consideration is given to representation from diverse geographic areas, gender, ethnic and minority groups, and the disabled. Members may be invited to serve up to four-year terms. Nominees must be U.S. citizens.

The following information must be submitted for each candidate: Name, affiliation, address, telephone number, and current curriculum vitae. E-mail addresses are requested if available.

Nominations should be sent, in writing, and postmarked by October 31, 2008 to: Sandra Malcom, Committee Management Specialist, NCEH/ATSDR, Centers for Disease Control and Prevention, 4770 Buford Highway (MS-F61), Chamblee, Georgia 30341. Telephone and facsimile submissions cannot be accepted.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the National Center for Environmental Health/Agency for Toxic Substances and Disease Registry.

Dated: June 30, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8–15429 Filed 7–7–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Peripheral and Central Nervous System Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee : Peripheral and Central Nervous System Drugs Advisory Committee.

General Function of the Committee : To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time : The meeting will be held on August 6 and 7, 2008, from 8 a.m. to5 p.m.

Location : Hilton Washington DC/Silver Spring, The Ballrooms, 8727 Colesville Rd., Silver Spring, MD. The hotel telephone number is 301–589–5200.

Contact Person : Diem-Kieu Ngo, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093) Rockville, MD 20857, 301–827–7001, FAX: 301–827–6776, e-mail: *diem.ngo@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512543. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda : On August 6, 2008, the committee will discuss new drug application (NDA) 20-427, vigabatrin, Ovation Pharmaceuticals, Inc., for the proposed indication of adjunctive therapy for the treatment of refractory complex partial seizures in adults. On August 7, 2008, the committee will discuss NDA 22–006, vigabatrin, Ovation Pharmaceuticals, Inc., for the proposed indication of treatment of infantile spasms.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*, click on the year 2008 and scroll down to the appropriate advisory committee link.

Procedure : Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before July 23, 2008. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. on both days. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the

approximate time requested to make their presentation on or before July 15, 2008. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by July 16, 2008.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Diem-Kieu Ngo at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/oc/advisory/default.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: June 26, 2008.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E8–15471 Filed 7–7–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with the requirement for the opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, e-mail *paperwork@hrsa.gov* or call the HRSA Reports Clearance Officer on (301) 443–1129.

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.

Proposed Project: Ryan White HIV/AIDS Program: Client Level Data Reporting System: New

The Client-Level Data Reporting System (CLDRS), created in 2008 by the Health Resources and Services Administration (HRSA), is designed to collect information from grantees, as well as their subcontracted service providers, funded under Parts A, B, C, D, and F of the Ryan White HIV/AIDS Treatment Modernization Act of 2006 (Ryan White HIV/AIDS Program). The Ryan White HIV/AIDS Program provides the Federal HIV/AIDS Programs in the Public Health Service (PHS) Act under Title XXVI, with the flexibility to respond effectively to the changing HIV epidemic. Its emphasis is on providing life-saving and life-extending services for people living with HIV/AIDS across the country, and on targeting resources to areas that have the greatest needs.

All Program Parts of the Ryan White HIV/AIDS Program specify HRSA's responsibilities in the administration of grant funds, the allocation of funds, the evaluation of programs for the population served, and the improvement of the quality of care. Accurate records of the providers receiving Ryan White HIV/AIDS Program funding, the services provided, and the clients served continue to be critical to the implementation of the legislation and thus are necessary for HRSA to fulfill its responsibilities.

Currently, the HIV/AIDS Bureau (HAB) requires that all Ryan White HIV/AIDS Program-funded grantees and their contracted service providers report aggregate data annually using the Ryan White Data Report. Agencies report data related to the service provider, clients, service visits provided/clients served, client demographics, and health insurance payments. The limitations of aggregate data are twofold: First, because they lack client identifiers, aggregate data by definition cannot be merged and unduplicated across service providers within a given geographic area. As a result, grantees, and ultimately HAB, cannot obtain accurate counts of the number of individuals served by the Ryan White HIV/AIDS Program. Second, aggregate data cannot be analyzed with the detail that is required to assess quality of care or to sufficiently account for the use of Ryan White HIV/AIDS Program funds.

A well designed and supported client level data reporting system, using a unique identifier that will be encrypted before transfer, would provide the grantee and HRSA with the requisite information to assess quality of care and unmet needs, and the ability to more accurately and efficiently report these figures to HAB and other funding agencies. In addition, HAB will be able to characterize accurately the number of clients served by the Ryan White HIV/AIDS Program and the outcomes of the program services on a national scale. The ability to perform detailed analyses will be possible only if organizations submit data associated with encrypted client identifiers. These unique identifiers must be able to link data for clients across Ryan White HIV/AIDS Program-funded grantees and their subcontracted service providers.

The CLDRS provides data on the characteristics of Ryan White HIV/AIDS Program-funded grantees, their contracted service providers, and the clients being served with program funds. It is intended to support clinical quality management, performance measurement, service delivery, and client monitoring at both the system and client levels. The reporting system consists of two online data forms, the Grantee Information Form and the Service Provider Form. A data file containing the client level data elements will be submitted with the two online data forms on a semi-annual basis.

The new legislation specifies increased grantee accountability and linking performance to budget. The CLDRS will be used to ensure compliance with the requirements of the reauthorized legislation, evaluate the progress of programs, monitor grantee and provider performance, measure the Government Performance and Result Act (GPRA) and the Performance Assessment Rating Tool (PART) goals, and meet reporting responsibilities to the Department, Congress, and OMB. In addition to meeting the goal of accountability to Congress, clients, advocacy groups, and the general public, information collected through the CLDRS is critical for HRSA, State

and local grantees, and individual providers. Through the CLDRS, these groups will assess the status of existing HIV-related service delivery systems to investigate trends in service utilization, and to identify areas of greatest need.

Discussions were conducted with 12 volunteer grantee agencies representing Parts A, B, C, D, and Minority AIDS Initiatives, Parts A and B, as a basis for the burden estimates for the CLDRS components that follow. These burden estimates are broken out by burden to grantee respondents and burden to provider respondents, and are presented in two tables. The first table represents the estimated burden for the first 6-month data submission. The second table represents the estimated burden for each subsequent 6-month data submission. The estimated number of visits per 6-month reporting period ranged from 1 to 17, with an average (mean) of 4 client visits per reporting period and a median of 2 client visits per reporting period.

The number of clients is estimated two ways. The first estimate is based on providers that reported outpatient/ambulatory medical care, medical case management, and/or non-medical case management services in the 2007 Ryan White Data Report. These providers will be required to report client level data beginning in 2009. This first estimate excludes providers of other direct client services because these providers will not be required to report client level data until 2010. The second estimate includes all providers that reported direct client services in the 2007 Ryan White Data Report.

The estimated response burden for the first 6-month reporting period CLDRS submission is as follows:

The response burden for grantees is estimated as:

Component	Source of funding	Number of respondents	Responses per grantee	Hours to complete/coordinate receipt of data reports	Total hour burden
Grantee Form	Part A	56	1	1.27	71
	Part B	57	1	6.00	342
	Part C	357	1	0.39	139
	Part D	90	1	0.67	60
	Part A MAI	56	1	1.27	71
	Part B MAI	30	1	10.00	300
Subtotal		646			983

Component	Number of respondents	Responses per grantee	Hours to develop/adjust CLD system	Total hour burden
CLD Collection System	563	1	1108.80	624254

The response burden for service providers is estimated as:

Component	Number of respondents	Responses per provider	Hours per response	Total hour burden
Provider Form	2253	1	2.35	5295

Component	Number of respondents	Responses (clients served) per provider	Total responses	Hours to collect/report data per respondent	Total hour burden
Client Data File	*1511	493.57	745784	1.65	1230544
	**2112	417.47	881703	1.65	1454810

* Outpatient/ambulatory medical care, medical case management, and/or non-medical case management providers only.
** All providers.

The estimated response burden for all subsequent 6-month reporting period CLDRS submissions is as follows:

The response burden for grantees is estimated as:

Component	Source of funding	Number of respondents	Responses per grantee	Hours to complete/coordinate receipt of data reports	Total hour burden
Grantee Form	Part A	56	1	1.02	57
	Part B	57	1	1.50	86
	Part C	357	1	0.32	114
	Part D	90	1	0.33	30
	Part A MAI	56	1	1.02	57

Component	Source of funding	Number of respondents	Responses per grantee	Hours to complete/coordinate receipt of data reports	Total hour burden
	Part B MAI	30	1	2.00	60
Subtotal		646			404

The response burden for service providers is estimated as:

Component	Number of respondents	Responses per provider	Hours per response	Total hour burden
Provider Form	2253	1	2.30	5182

Component	Number of respondents	Responses (clients served) per provider	Total responses	Hours to collect/report data per respondent	Total hour burden
Client Data File	*1511	493.57	745784	1.65	1230544
	**2112	417.47	881703	1.65	1454810

*Outpatient/ambulatory medical care, medical case management, and/or non-medical case management providers only.
**All providers.

E-mail comments to *paperwork@hrsa.gov* or mail comments to the HRSA Reports Clearance Officer, Room 10–33, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Written comments should be received within 60 days of this notice. Information can also be accessed at *http://datasupport.hab.hrsa.gov/*.

Dated: June 30, 2008.

Alexandra Huttinger,

Director, Division of Policy Review and Coordination.

[FR Doc. E8–15470 Filed 7–7–08; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of 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 meetings of the Board of Regents of the National Library of Medicine.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The 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: Board of Regents of the National Library of Medicine; Extramural Programs Subcommittee.

Date: September 15, 2008.

Closed: 4 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Building 38, Conference Room B, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: Donald A.B. Lindberg, MD, Director, National Library of Medicine, 8600 Rockville Pike, Bethesda, MD 20894, 301–496–6221, *lindberg@mail.nih.gov.*

Name of Committee: Board of Regents of the National Library of Medicine; Subcommittee on Outreach and Public Information.

Date: September 16, 2008.

Open: 7:30 a.m. to 8:45 a.m.

Agenda: Outreach Activities.

Place: National Library of Medicine, Building 38, Conference Room B, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: Donald A.B. Lindberg, MD, Director, National Library of Medicine, 8600 Rockville Pike, Bethesda, MD 20894, 301–496–6221, *lindberg@mail.nih.gov.*

Name of Committee: Board of Regents of the National Library of Medicine.

Date: September 16–17, 2008.

Open: September 16, 2008, 9 a.m. to 4:30 p.m.

Agenda: Program Discussion.

Place: National Library of Medicine, Building 38, Board Room, 2nd Floor, 8600 Rockville Pike, Bethesda, MD 20892.

Closed: September 16, 2008, 4:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Building 38, Board Room, 2nd Floor, 8600 Rockville Pike, Bethesda, MD 20892.

Open: September 17, 2008, 9 a.m. to 12 p.m.

Agenda: Program Discussion.

Place: National Library of Medicine, Building 38, Board Room, 2nd Floor 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: Donald A.B. Lindberg, MD, Directorm National Library of Medicine, 8600 Rockville Pike, Bethesda, MD 20894, 301–496–6221, *lindberg@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, drivers license, or passport) and to state the purpose of their visit.

Information is also available on the Institutes/Center's home page: *http://www.nlm.nih.gov/od/bor/bor.html,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: June 27, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–15192 Filed 7–7–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; 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 Board of Scientific Counselors, Lister Hill National Center for Biomedical Communications.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Library of Medicine, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, Lister Hill National Center for Biomedical Communications.

Date: September 11–12, 2008.

Open: September 11 2008, 9 a.m. to 10:15 a.m.

Agenda: Review of research and development programs and preparation of the reports of the Lister Hill Center for Biomedical Communications.

Place: National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

Closed: September 11, 2008, 10:30 a.m. to 2 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

Closed: September 12, 2008, 9 a.m. to 10 a.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

Open: September 12, 2008, 10 a.m. to 11:15 a.m.

Agenda: Review of research and development programs and preparation of reports of the Lister Hill Center for Biomedical Communications.

Place: National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike.

Contact Person: Karen Steely, Program Assistant, Lister Hill National Center for Biomedical Communications, National Library of Medicine, Building 38a, Room 7s709, Bethesda, MD 20892, 301–435–3137, *ksteely@mail.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, drivers license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: June 27, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–15188 Filed 7–7–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; 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 Board of Scientific Counselors, National Center for Biotechnology Information.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual other conducted by the National Library of Medicine, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Center for Biotechnology Information.

Date: November 18, 2008.

Open: 8:30 a.m. to 12 p.m.

Agenda: Program Discussion.

Place: National Library of Medicine, Building 38, Board Room, 2nd Floor, 8600 Rockville Pike, Bethesda, MD 20892.

Closed: 12 p.m. to 2 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Library of Medicine, Building 38, Board Room, 2nd Floor, 8600 Rockville Pike, Bethesda, MD 20892.

Open: 2 p.m. to 3 p.m.

Agenda: Program discussion.

Place: National Library of Medicine, Building 38, Board Room, 2nd Floor, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: David J. Lipman, MD Director, Natl Ctr for Biotechnology Information, National Library of Medicine, Department of Health and Human Services, Building 38a, Room 8n805, Bethesda, MD 20894, 301–435–5985, *dlipman@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: June 27, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–15191 Filed 7–7–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; Innovative Technology Solutions to Cancer Sample Preparation.

Date: July 24, 2008.

Time: 11 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6116 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Sherwood Githens, PhD, Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Blvd. Room 8053, Bethesda, MD 20892, 301/435–1822, *githenss@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 26, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–15464 Filed 7–7–08; 8:45 am]

BILLING CODE 4140–01–P

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 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; Behavioral Mechanisms in Alcohol Seeking (RFA AA–08–0071008).

Date: July 16, 2008.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications (RFA AA–08–007/008).

Place: National Institutes of Health, 5635 Fishers Lane Bethesda, MD 20892.

Contact Person: Beata Buzas, PhD, Scientific Review Officer, 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: June 27, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–15189 Filed 7–7–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2008–0070]

Homeland Security Science and Technology Advisory Committee

AGENCY: Science and Technology Directorate, DHS.

ACTION: Committee Management; Notice of Open Federal Advisory Committee Meeting.

SUMMARY: The Homeland Security Science and Technology Advisory Committee will meet July 15, 2008, at 1120 Vermont Avenue, NW., in Washington, DC.

DATES: The Homeland Security Science and Technology Advisory Committee will meet July 15, 2008, from 9 a.m. to 12 p.m. The mission of the Committee is to be a source of independent, scientific and technical planning advice for the Under Secretary for Science and Technology. The duties of the committee are solely advisory.

The committee will meet for the purpose of discussing last year's Improvised Explosive Device study, and current committee efforts, and to solicit input from attendees on future efforts.

ADDRESSES: The meeting will be held at 1120 Vermont Avenue, NW., Washington, DC. Requests to have written material distributed to each member of the committee prior to the meeting should reach the contact person at the address below by July 7, 2008. Send written material to Ms. Deborah Russell, Science and Technology Directorate, Department of Homeland Security, 245 Murray Drive, Bldg. 410, Washington, DC 20528. Comments must be identified by DHS–2008–0070 and may be submitted by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: HSSTAC@dhs.gov.* Include the docket number in the subject line of the message.
- *Fax:* 202–254–6173.
- *Mail:* Ms. Deborah Russell, Science and Technology Directorate, Department of Homeland Security, 245 Murray Drive, Bldg. 410, Washington, DC 20528.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov*, including any personal information provided.

Docket: For access to the docket to read background documents or

comments received by the Homeland Security Science and Technology Advisory Committee, go to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Russell, Science and Technology Directorate, Department of Homeland Security, 245 Murray Drive, Bldg. 410, Washington, DC 20528 202–254–5739.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463).

Public Attendance: Due to meeting space restrictions, the maximum number of public attendees will be 20. Members of the public will be registered to attend the public session on a first-come, first-served basis per the procedures that follow. Any member of the public who wishes to attend the public session must provide his or her name, citizenship and affiliation no later than 5 p.m. EST, Wednesday, July 9, 2008. Please provide the required information to Deborah Russell via phone at 202–254–5739. Persons with disabilities who require special assistance should indicate so in their admittance request. Photo identification will be required for entry into the public session, and everyone in attendance must be present and seated by 9 a.m. on July 15, 2008.

Bradley Buswell,

Deputy Under Secretary for Science and Technology.

[FR Doc. E8–15448 Filed 7–7–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–526, Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Form I–526, Immigrant Petition by Alien Entrepreneur; OMB Control No. 1615–0026.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on April 11, 2008, at 73 FR 19860, allowing for a 60-day public comment period. USCIS did not receive any comments for this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until August 7, 2008. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, Suite 3008, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov*, and to the OMB USCIS Desk Officer via facsimile at 202–395–6974 or via e-mail at *oira_submission@omb.eop.gov*.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the 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 collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Immigrant Petition by Alien Entrepreneur.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–526. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals and households. This form is used by the USCIS to determine if an alien can enter the U.S. to engage in commercial enterprise.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,368 responses at 1 hour and 15 minutes (1.25 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,710 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please visit the USCIS Web site at: *http://www.regulations.gov/search/index.jsp.*

If additional information is required contact: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, Suite 3008, Washington, DC 20529, (202) 272–8377.

Dated: July 1, 2008.

Stephen Tarragon,

Acting Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E8–15395 Filed 7–7–08; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: File No. OMB–25, Special Immigrant Visas for Fourth Preference Employment-Based Broadcasters; OMB Control No. 1615–0064.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on April 30, 2008, at 73 FR

23478, allowing for a 60-day public comment period. USCIS did not receive any comments for this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until August 7, 2008. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, Suite 3008, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov,* and to the OMB USCIS Desk Officer via facsimile at 202–395–6974 or via e-mail at *oira_submission@omb.eop.gov*.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the 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 collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Special Immigrant Visas for Fourth Preference Employment-Based Broadcasters.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* No Agency Form Number (File No. OMB–25). U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals and households. The information collected via the submitted supplemental documentation (as contained in 8 CFR 204.13(d)) will be used by the USCIS to determine eligibility for the requested classification as fourth preference employment-based immigrant broadcasters.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 100 responses at 2 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 200 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please visit the USCIS Web site at: *http://www.regulations.gov/search/index.jsp.*

If additional information is required contact: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, Suite 3008, Washington, DC 20529, (202) 272–8377.

Dated: July 1, 2008.

Stephen Tarragon,

Acting Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E8–15396 Filed 7–7–08; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2008–N0140; 20124–1113–0000–F2]

Balmorhea State Park Management Plan Habitat Conservation Plan, Reeves County, TX

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability: Draft low effect habitat conservation plan and permit application.

SUMMARY: The Texas Parks and Wildlife Department (Applicant) has applied for an incidental take permit (Permit) under Section 10(a)(1)(B) of the Endangered Species Act of 1973 as amended (ESA) for the incidental take of the endangered Comanche Springs pupfish (*Cyprinodon elegans*) and Pecos gambusia (*Gambusia nobilis*), as well as the following candidate species: Phantom springsnail (*Tryonia cheatumi*), diminutive amphipod (*Gammarus hyalleloides*), and Phantom Lake Cave Snail (*Cochliopa texana*). The potential take would occur incidental to normal management activities at Balmorhea State Park (Park), Reeves County, Texas.

DATES: To ensure consideration, we must receive written comments on or before August 7, 2008.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Room 4102, Albuquerque, NM 87103. Persons wishing to review the EA/HCP may obtain a copy by written or telephone request to William Amy, Ecological Services Office, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, TX 78758 (512/490–0057, ext. 234). Documents will be available for public inspection by written request, or by appointment only during normal business hours (8 a.m. to 4:30 p.m.), at the above Austin address.

FOR FURTHER INFORMATION CONTACT: William Amy, Ecological Services Office, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, TX 78758 (512/490–0057, ext. 234).

Applicant: The Texas Parks and Wildlife Department (Applicant) has applied for an incidental take permit (Permit) pursuant to Section 10(a)(1)(B) of the Endangered Species Act of 1973 as amended (16 U.S.C. 153101544, 87 Stat. 884) (ESA), from the U.S. Fish & Wildlife Service (Service) for incidental take of the endangered Comanche Springs pupfish (*Cyprinodon elegans*) and Pecos gambusia (*Gambusia nobilis*), as well as the following species, which are candidates to be listed: Phantom springsnail (*Tryonia cheatumi*), diminutive amphipod (*Gammarus hyalleloides*), and Phantom Lake Cave Snail (*Cochliopa texana*). The potential take is incidental to management activities at Balmorhea State Park.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the ''taking'' of endangered species such as the Comanche Springs pupfish and Pecos gambusia. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

The Balmorhea State Park Management Plan HCP qualifies as a ''Low Effect'' HCP as defined in the Service Habitat Conservation Planning Handbook (November 1996). Low Effect HCPs have relatively minor or negligible

impacts. Therefore, this action is a categorical exclusion as provided by 516 DM 2 Appendix 1 and 516 DM 6 Appendix 1 and no further NEPA documentation is required. A determination of jeopardy or non-jeopardy to the species will not be made until at least 30 days after the date of publication of this notice. We provide this notice under Section 10(c) of the ESA and National Environmental Policy Act regulations (40 CFR 1506.6).

Public Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Data or comments concerning the application and HCP should be submitted in writing to the Field Supervisor, U.S. Fish and Wildlife Service, Ecological Services Office, Austin, Texas at the above address. Please refer to permit number TE–183172–0 when submitting comments.

Christopher T. Jones,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. E8–15466 Filed 7–7–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2008–N0121; 10120–1112–0000–F2]

Incidental Take Permit Application for Construction and Operation of Seven Meteorological Towers on Lanai, Hawaii

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; draft environmental assessment and habitat conservation plan; and receipt of application for an incidental take permit.

SUMMARY: Castle and Cooke Resorts, LLC (Applicant), has submitted an application to the U.S. Fish and Wildlife Service (Service) for an incidental take permit (permit) pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (ESA). The Applicant is requesting a permit because incidental take of four species listed under the ESA may occur as a result of construction and operation of seven meteorological towers on the island of Lanai, Hawaii: The endangered Hawaiian petrel (*Pterodroma sandwichensis*), endangered Hawaiian stilt (*Himantopus mexicanus knudseni*), endangered Hawaiian hoary bat (*Lasiurus cinereus semotus*), and the threatened Newell's (Townsend's) shearwater (*Puffinus auricularis newelli*). Six of the seven towers have already been constructed. If approved, the permit would authorize take, incidental to otherwise lawful activities. The permit application includes a draft Habitat Conservation Plan (HCP) that describes the Applicant's actions and the measures the Applicant will implement to minimize, mitigate, and monitor take of listed species. The Service also announces the availability of a draft Environmental Assessment (EA) that has been prepared in response to the permit application in accordance with requirements of the National Environmental Policy Act (NEPA). We are making the permit application package available for public review and comment.

DATES: All comments from interested parties must be received on or before August 7, 2008.

ADDRESSES: Please address written comments to Patrick Leonard, Project Leader, Pacific Islands Fish and Wildlife Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Room #3–122, Honolulu, HI 96850. You may also send comments by facsimile at (808) 792–9580.

FOR FURTHER INFORMATION CONTACT: Bill Standley, Fish and Wildlife Biologist, U.S. Fish and Wildlife Service (see **ADDRESSES** above), telephone (808) 792–9400.

SUPPLEMENTARY INFORMATION:

Availability of Documents

The permit application, which includes a draft HCP and a draft EA, are available for public inspection, by appointment between the hours of 8 a.m. and 5 p.m. at the Pacific Islands Fish and Wildlife Office (see **ADDRESSES** above). You may also request copies of the documents by contacting the Service's Pacific Islands Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** above).

We specifically request information, views, and opinions from the public on the proposed Federal action of issuing a permit, including the identification of any aspects of the human environment not already analyzed in our draft EA. Further, we specifically solicit information regarding the adequacy of the HCP relative to minimizing, mitigating, and monitoring the impacts of taking each of the covered listed species and relative adaptive management, as evaluated against our permit issuance criteria found in 50 CFR 13.21, 17.22, and 17.32. Pursuant to section 10(c) of the ESA, the Service is making the permit application package available for public review and comment for 30 days for the purposes of the Federal action (see **DATES** section above).

All comments received will become part of the public record for this proposed action. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Respondents may request that we withhold their identity from the administrative record. We will honor such requests to the extent allowed by law. If you wish us to withhold your identity (e.g., individual name, home address, and home phone number), you must state this prominently at the beginning of your comments.

Background

Section 9 of the ESA (16 U.S.C. 1531 *et seq.*) and Federal regulations prohibit the ''take'' of fish and wildlife species listed as endangered or threatened. The term ''take'' means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct (16 U.S.C.1538). However, under section 10(a) of the ESA, we may issue permits to authorize ''incidental take'' of listed fish and wildlife species. Incidental take is defined by the ESA as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species are found at 50 CFR 17.32 and 17.22. If issued, the permittee would receive assurances under the Service's ''No Surprises'' regulation.

The Applicant has applied to the Service for an incidental take permit for the endangered Hawaiian petrel, endangered Hawaiian stilt, endangered Hawaiian hoary bat, and the threatened Newell's (Townsend's) shearwater (covered species), pursuant to section 10(a)(1)(B) of the ESA. The Applicant has constructed six meteorological (met) towers and they are proposing construction of a seventh met tower, on private land that they own. The activities proposed to be covered by the permit are the construction of the seventh met tower and the operation and maintenance of all seven towers. The met towers would be used for up to 2 years to collect data on wind patterns;

these data would be used to assess the suitability of the wind regime to sustain a wind-turbine facility for electrical energy production. Each met tower is 165-feet-tall (50-meters-tall) and each rest on a steel base plate approximately 9 square feet (0.8 square meter) in size. Each met tower is supported with aircraft cable guy wires in four directions at each of six guy levels. The guy wire radius is 100 feet to 110 feet (30.5 to 33.5 meters). The guy wires are anchored with standard dead-man type anchors to a depth of 5 to 8 feet (1.5 to 2.4 meters). The met towers are located within a combined footprint area of approximately 13 acres (5.3 hectares).

The activities proposed to be covered are the construction of one met tower and the maintenance and operation of seven met towers. No listed species are known to inhabit the area in the immediate vicinity of the towers, however, incidental take may occur via collision of individual animals flying through the air space occupied by the towers and guy wires. Removal of invasive plants in the mitigation area may also result in take in the form of disturbance of the covered species.

Incidental take of covered species may occur as a result of these proposed covered activities. The Applicant proposes to minimize, mitigate, and monitor the impacts of taking listed species by implementing the following measures: (1) Siting the towers as far from the island's Hawaiian petrel colony and Newell's shearwater nesting habitat as possible; (2) marking towers and guy wires with bird diverters and flagging to increase visibility; (3) monitoring towers for dead or injured birds and bats throughout the period they are operated; (4) conducting predator control within the island's Hawaiian petrel colony, Newell's shearwater nesting habitat and hoary bat habitat; (5) conducting predator control at the island's wastewater treatment plant where Hawaiian stilts nest; and (6) removing invasive plants, primarily strawberry guava (*Psidium cattleianum*), to facilitate the re-establishment of native vegetation within forest habitat adjacent to the Hawaiian petrel colony and within Newell's shearwater and hoary bat habitat.

Our EA considers the direct, indirect, and cumulative effects of the proposed action of permit issuance, including the measures that would be implemented to minimize and mitigate such impacts. The EA contains an analysis of three alternatives: (1) No Action (no permit issuance and the met towers would be removed); (2) the Proposed Action (with issuance of the permit and implementation of the HCP); and (3) the use of monopole met towers. Under the third alternative, met towers that do not require the use of guy wires but require a much larger foundation would be constructed.

This notice is provided pursuant to section 10(c) of the ESA and NEPA regulations (40 CFR 1506.6). The public process for the proposed Federal action will be completed after the public comment period, at which time we will evaluate the permit application, the HCP and associated documents, and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the ESA and NEPA regulations. If we determine that those requirements are met, we will issue an incidental take permit to the Applicant.

Dated: May 28, 2008.

David J. Wesley,

Deputy Regional Director, U.S. Fish and Wildlife Service, Region 1, Portland, Oregon.

[FR Doc. E8–15417 Filed 7–7–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2008–N0098; 11120–0008–0221–F2]

Safe Harbor Agreement for the Northern Spotted Owl for Fred M. van Eck Forest Foundation, Humboldt County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and receipt of application.

SUMMARY: This notice advises the public that the Fred M. van Eck Forest Foundation (Applicant) has applied to the Fish and Wildlife Service (Service) for an enhancement of survival permit pursuant to Section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (Act). The permit application includes a proposed Safe Harbor Agreement (Agreement) between the Applicant and the Service for the threatened northern spotted owl (*Strix occidentalis caruina*). The proposed Agreement and permit would remain in effect for 90 years. We request comments from the public on the permit application and an Environmental Action Statement that has been prepared to comply with the National Environmental Policy Act.

DATES: Written comments should be received on or before August 7, 2008.

ADDRESSES: Send written comments to Mr. Michael Long, Field Supervisor, Fish and Wildlife Service, 1655 Heindon Road, Arcata, California 95521. You also may send comments by facsimile to (707) 822–8411.

FOR FURTHER INFORMATION CONTACT: Mr. John Hunter (**ADDRESSES**) (707) 822–7201.

SUPPLEMENTARY INFORMATION:

Background

Under a Safe Harbor Agreement, participating landowners voluntarily undertake management activities on their property to enhance, restore, or maintain habitat benefiting species listed under the Act. Safe Harbor Agreements, and the subsequent enhancement of survival permits that are issued pursuant to Section 10(a)(1)(A) of the Act (15 U.S.C. 1531 *et seq.*), encourage private and other non-Federal property owners to implement conservation efforts for listed species, by assuring property owners that they will not be subject to increased land use restriction as a result of efforts to attract or increase the numbers or distribution of a listed species on their property. Application requirements and issuance criteria for enhancement of survival permits through Safe Harbor Agreements are found in 50 CFR 17.22(c) and 17.32(c).

We have worked with the Fred M. van Eck Forest Foundation to develop a Safe Harbor Agreement for the creation and enhancement of habitat for the northern spotted owl on four Fred M. van Eck Forest Foundation properties totaling 2,163 acres in Humboldt County, California. The term of the proposed Agreement is 90 years. Currently the properties support 1,730 acres of northern spotted owl nesting and roosting habitat and one northern spotted owl activity center. We anticipate that under the northern spotted owl habitat creation and enhancement timber management regime proposed in the Agreement, approximately 1,947 acres of nesting and roosting habitat and potentially up to five northern spotted owl activity centers could exist on the property at the end of 90 years. The proposed Safe Harbor Agreement does not provide for a return to baseline conditions at the end of the Agreement term. Instead, the Agreement provides that if more than five northern spotted owl activity centers should become established on the property during the 90 year term, the Applicant would be allowed to remove such additional activity centers during the Agreement period. Under the Agreement, Fred M. van Eck Forest Foundation will: (1) Conduct surveys annually to determine the locations and

reproductive status of any northern spotted owls; (2) protect up to five activity centers (locations where owls are observed nesting or roosting) with a no-harvest area that buffers the activity center by no less than 100 feet; (3) utilize selective timber harvest methods such that suitable nesting habitat is maintained within 300 feet of each activity center; (4) limit noise disturbance from timber harvest operations within 1,000 feet of an active nest during the breeding season; and (5) manage all second growth redwood timber on the property in a manner that maintains or creates suitable nesting and roosting habitat over time.

Consistent with our Safe Harbor Policy, we propose to issue a 90 year permit to Fred M. van Eck Forest Foundation authorizing take of northern spotted owls incidental to timber harvest operations carried out in accordance with the habitat management provisions in the Agreement. Specifically, if more than five northern spotted owl activity centers become established on the property, take of northern spotted owls associated with the effects of timber harvest on such additional northern spotted owl activity centers would be authorized under the incidental take permit during the 90 year permit term. At the end of the 90 year Agreement and permit term, no further take of northern spotted owls would be allowed unless the Safe Harbor Agreement and incidental take permit are renewed or extended. The development and maintenance of high-quality habitat in a matrix of private timberland subject to even-aged management regimes will provide a relatively stable habitat condition that we believe will provide high productivity for multiple generations of spotted owls. Therefore, the cumulative impact of the Agreement and the activities it covers, which are facilitated by the allowable incidental take, is expected to provide a net conservation benefit to the northern spotted owl.

Public Review and Comments

Individuals wishing copies of the permit application, the Environmental Action Statement, or copies of the full text of the Safe Harbor Agreement, including a map of the proposed permit area, references, and legal descriptions of the proposed permit area, should contact the office and personnel listed in the **ADDRESSES** section. Documents will also be available for public inspection, by appointment, during normal business hours at this office (see **ADDRESSES**).

We invite the public to review the Safe Harbor Agreement and Environmental Action Statement during a 30-day public comment period (see **DATES**). Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may 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 provide this notice pursuant to Section 10(c) of the Act. We will evaluate the permit application, associated documents, and comments submitted therein to determine whether the permit application meets the requirements of Section 10(a) of the Act and NEPA regulations. If, upon completion of the 30-day comment period, we determine that the requirements are met, we will sign the Agreement and issue an enhancement of survival permit under Section 10(a)(1)(A) of the Act to Fred M. van Eck Forest Foundation for take of northern spotted owls incidental to otherwise lawful activities in accordance with the terms of the Agreement.

Dated: June 12, 2008.

Michael M. Long,

Field Supervisor, Arcata Fish and Wildlife Office, Arcata, California.

[FR Doc. E8–15365 Filed 7–7–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–8101–08; AK–964–1410–KC–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving the subsurface estate in certain lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to The Aleut Corporation. The lands are in the vicinity of Umnak Island, Alaska, and are located in:

Seward Meridian, Alaska

T. 78 S., R. 129 W.,
Secs. 1 to 23, inclusive;
Secs. 26 to 33, inclusive.
Containing approximately 19,658 acres.

T. 79 S., R. 129 W.,
Secs. 4, 5, and 6.
Containing approximately 1,905 acres.

T. 79 S., R. 130 W.,
Secs. 1 to 6, inclusive;
Secs. 8, 9, and 16.
Containing approximately 5,745 acres.
Aggregating approximately 27,308 acres.

Notice of the decision will also be published four times in the Dutch Harbor Fisherman.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until August 7, 2008 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION, CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov*. Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Hillary Woods,

Land Law Examiner, Land Transfer Adjudication I.

[FR Doc. E8–15412 Filed 7–7–08; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–025–1220–PC–020F; 8–08807; TAS: 14X1109]

Final Supplementary Rules on Public Land in Humboldt, Pershing and Washoe Counties, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Final Supplementary Rules.

SUMMARY: The Bureau of Land Management (BLM) Winnemucca Field Office, Nevada, and Surprise Field Office, California, are issuing new supplementary rules for the Black Rock Desert-High Rock Canyon Emigrant Trails National Conservation Area

(NCA), associated designated wilderness, and other contiguous lands as identified in the 2004 Resource Management Plan (RMP) and Record of Decision. These supplementary rules are needed to protect the area's natural and cultural resources and provide for public health and safety on public lands. These supplementary rules do not propose or implement any land use limitation or restrictions other than those limitations or restrictions included within the decisions in the RMP or allowed for by existing law or regulation.

DATES: These supplementary rules are effective August 7, 2008.

ADDRESSES: Bureau of Land Management, Winnemucca Field Office, Attn: Dave Cooper, 1500 E. Winnemucca Blvd., Winnemucca, NV 89445–2921.

FOR FURTHER INFORMATION CONTACT: Dave Cooper, NCA Manager, 775–623–1500, e-mail *dave_cooper@nv.blm.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The Black Rock Desert-High Rock Canyon Emigrant Trails National Conservation Area and associated wilderness was created by Congress on December 21, 2000 (Pub. L. 106–554).

During a three and a half year planning process required by the enabling legislation, the BLM prepared a RMP for the NCA, associated wilderness and other contiguous lands. The RMP contains decisions that include additional limitations on public use within the RMP planning area. These supplementary rules are necessary to implement those limitations.

On November 9, 2007 the BLM published proposed supplementary rules for the Black Rock Desert-High Rock Canyon Emigrant Trails National Conservation Area, associated designated wilderness, and other contiguous lands in Nevada, requesting public review and comment. 72 FR 63625.

II. Public Comment

The comment period closed December 10, 2007. The BLM received one written response from a non-governmental organization. The comment was generally supportive of the proposed supplementary rules, but expressed concern about the complexity of the language and recommended brevity and simplicity. However the comment provided no specific examples of where the rules were too complex, nor were there suggestions as to where the proposed rules could be shortened or simplified. During the preparation of the RMP, the decisions which form the basis of the proposed rules were subject to public scrutiny and the wording was carefully chosen to be as clear and concise as possible.

The comment also included two specific issues:

(1) The comment stated, ''Damage to any vegetation should be prohibited in the front country zone.'' This comment is related to Section 1, Rule 1 of these supplementary rules: ''Unless posted or prohibited, you may pull off designated roads and trails a maximum of 50 feet from the center of the road/trail for parking or camping if damage to vegetation will be *minimal* and new parallel roads will not be created.'' (emphasis added). The commenter's reasoning was that, because the word ''minimal'' was not defined in the proposed supplementary rule, visitors may view their impact on vegetation as minimal when in fact the damage may be significant.

BLM Response: The term ''front country zone'' in the comment refers to portions of the planning area for which the RMP authorizes the highest levels of public use. (Section 2 of these supplementary rules includes a more detailed definition.) A rule prohibiting damage to ''any'' vegetation in the front country zone (for example, the trampling of a single blade of grass) would effectively prohibit public use of any areas away from designated roads and trails in that zone.

This result would clearly be inconsistent with the decision of the RMP (section 2.2.2 Decision TRAN–11) to allow vehicle parking and camping within the front country zone. The RMP also contains a statement in section 2.2.20 Decision REC–5 which notes that: ''Visitors will be encouraged to use existing disturbed areas for camping and pulling off roads and motorized trails to access camping areas, and will be required to leave vegetation intact.''

In order to address the commenter's concerns, the BLM has added a definition of ''minimal damage to vegetation'' in section 2 of these supplementary rules to better clarify the intent of the rule while still providing for reasonable public uses of the area. The added definition states: ''Minimal Vegetation Damage: Crushing by foot or vehicle tires or the physical removal with hand tools of herbaceous vegetation or woody vegetation less than 18 inches tall necessary for the parking of one or more motorized vehicles, establishment of a campsite, or providing for a safe campfire. The physical removal or damage of woody vegetation taller than 18 inches is considered more than minimal damage.''

(2) The comment stated, ''Collecting of plants, rocks, or other items should be discouraged in the front country zone.''

BLM Response: Rules 3 and 4 under Section 1 are related to collection of rocks and fossils:

Rule 3: ''You must not collect petrified wood, common invertebrate fossils, rocks or minerals with motorized equipment.''

Rule 4: ''You must not collect more than 25 pounds per day plus one piece, with a maximum collection of 250 pounds per year, of petrified wood. Similar limits apply to each of the following: Common invertebrate fossils, rocks, and minerals.''

The front country zone encompasses about 121,245 acres of the RMP planning area. Approximately 88 percent of this area is associated with the barren playa of the Black Rock Desert. The remaining portions of the front country zone are areas adjacent to the playa or very small areas near Massacre Ranch, Stevens Camp and the Soldier Meadows hot springs. The front country zone is not known for rocks, petrified wood or invertebrate fossils sought by collectors. For this reason, the BLM does not see a need to further restrict the collection of rock or fossils in the front country zone.

The BLM has also determined that the RMP, and the definition of ''Minimal Damage to Vegetation'' in these supplementary rules, adequately addresses the collection of plants in the front country zone. The most common type of collection of vegetative matter that occurs within the front country zone is firewood collection associated with removal of brush within short distances of campsites. The collection of plants associated with botanical research or removal of plants for horticultural use is very limited within the entire planning area.

The RMP in sections 2.2.20 contains decisions related to the collection of plant materials and camping within the front country zone:

Decision REC–19 (2.2.20) states: ''Cutting of green or standing trees in the planning area will be prohibited, and wood collection may be further restricted in sensitive habitat areas or where resources have been depleted.''

Decision REC–6 establishes that camping within the front country zone will only be allowed at designated sites.

Decision REC–7 provides that where monitoring data shows that camping is causing resource damage, camping can be restricted or eliminated. These two decisions give the BLM control over

where visitors camp within the front country zone, and the ability to eliminate or restrict camping where resource impacts, including over collection of firewood, might occur in the future. Moreover, these supplementary rules prohibit the physical removal or damage of woody vegetation taller than 18 inches, and the collection of more wood than is necessary for a safe campfire. The BLM sees no need to further restrict the collection of plants in the front country zone.

III. Discussion of Rules

These supplementary rules apply to the public lands within the boundary of the planning area for the Black Rock Desert-High Rock Canyon Emigrant Trails National Conservation Area, associated wilderness, and other contiguous lands as set forth in the RMP. The BLM has determined these supplementary rules to be necessary to protect the area's natural and cultural resources, to provide for public health and safety, reduce user conflict, enhance the experience of the visitor, and reduce the potential for damage to the environment. These supplementary rules do not propose or implement any land use limitations or restrictions other than those limitations or restrictions included within the decisions in the RMP or allowed for by existing law or regulation.

Some of these supplementary rules make reference to designated camping areas, routes, trails and management zones. Those designations were developed as part of the collaborative resource management planning process for the NCA, associated wilderness, and other contiguous lands in Nevada, which resulted in adoption of the plan in July 2004. A map showing the lands to which these rules apply, which is all lands within the planning area, can be found in the RMP at Section 1.3 and as shown at Map 1.1, or can be obtained at the address listed above.

IV. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

These supplementary rules are not a significant regulatory action and are not subject to review by Office of Management and Budget under Executive Order 12866. These supplementary rules will result in an annual cost of much less than $100 million or more on the economy. They will not adversely affect in a material way the economy, productivity, competition, jobs, environment, public health or safety, or state, local, or tribal governments or communities. These supplementary rules will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. These supplementary rules do not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients; nor do they raise novel legal or policy issues. They impose rules of conduct and impose other limitations on certain recreational activities within the NCA, associated wilderness, and other contiguous lands in Nevada to protect natural and cultural resources and human health and safety.

Clarity of the Supplementary Rules

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. A comment was received stating that the proposed supplementary rules were too complex and encouraged brevity and simplicity. However, the commenter did not suggest where the rules were too complex or suggest ways they could be simplified. The commenter did point out that the word ''minimal'' in one rule was not defined and that lack of a definition could lead to confusion among visitors, and could result in damage to vegetation. As a result of that comment, the BLM added a definition of ''minimal vegetation damage'' to the final rule.

National Environmental Policy Act

The BLM prepared an environmental impact statement as part of the development of the RMP. During that National Environmental Policy Act process, many proposed decisions were fully analyzed, including the substance of these supplementary rules. The pertinent analysis can be found in Chapter 2, Alternatives, of the Proposed Resource Management Plan and Final Environmental Impact Statement for the Black Rock Desert-High Rock Canyon Emigrant Trails National Conservation Area (NCA) and Associated Wilderness, and Other Contiguous Lands in Nevada, September 2003. The Record of Decision for the RMP was signed by the BLM State Directors of Nevada and California on July 15, 2004. These supplementary rules provide for enforcement of plan decisions. The rationale for the decisions made in the plan is fully covered in the EIS. The EIS is available for review in the BLM administrative record at the address specified in the **ADDRESSES** section.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980 (RFA), as amended, 5 U.S.C. 601–612, to ensure that government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. These supplementary rules pertain to recreational use of specific public lands, and do not affect commercial or governmental entities of any size. Therefore, the BLM has determined under the RFA that these supplementary rules will not have a significant economic impact on a substantial number of small entities, and do not necessitate preparation of a regulatory flexibility analysis.

Small Business Regulatory Enforcement Fairness Act

These supplementary rules do not constitute a ''major rule'' as defined at 5 U.S.C. 804(2). They will not result in an annual effect on the economy of $100 million or more, in a major increase in costs or prices, or in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. They will merely impose reasonable restrictions on certain recreational activities in the NCA, associated wilderness and contiguous lands to protect natural and cultural resources, the environment, and human health and safety.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act (UMRA), 2 U.S.C. 1501 et. seq., requires an assessment of unfunded mandates on state, local or tribal governments. These supplementary rules do not impose any unfunded mandate on state, local, or tribal governments, in the aggregate, or the private sector, of more than $100 million per year. The rules also will not have a significant or unique effect on small governments. They restrictions on certain recreational activities in the NCA, associated wilderness, and contiguous lands to protect natural and cultural resources, the environment and human health and safety. Therefore, the BLM is not required to prepare a statement containing the information required by the UMRA.

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

These supplementary rules are not a government action capable of interfering with constitutionally protected property

rights. The rules will have no effect on private lands or property. Therefore, the BLM has determined that these supplementary rules will not cause a taking of private property or require preparation of a takings assessment under this Executive Order.

Executive Order 13132, Federalism

These supplementary rules 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. These supplementary rules will have little or no effect on state or local government. Therefore, in accordance with Executive Order 13132, the BLM has determined that these supplementary rules do not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the BLM has determined that these supplementary rules will not unduly burden the judicial system and that they meet the requirements of sections 3(a) and 3(b)(2) of the Order.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

These supplementary rules provide for enforcement of decisions adopted in the Record of Decision and thoroughly analyzed in the EIS prepared for the Black Rock Desert-High Rock Canyon Emigrant Trails National Conservation Area associated wilderness, and other contiguous lands in Nevada. During preparation of the EIS, government-to-government consultation was conducted with the six tribal governments with interests in the affected area. None of these tribal governments expressed concerns regarding the decisions these supplementary rules are designed to enforce. Therefore, in accordance with Executive Order 13175, the BLM has found that these supplementary rules do not include policies that have tribal implications.

Paperwork Reduction Act

These supplementary rules do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

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

These supplementary rules do not comprise a significant energy action. They will not have an adverse effect on energy supplies, production, or consumption. They address recreational use of specific public lands, and have no connection with energy policy.

Author

The author of these supplementary rules is Dave Cooper, Bureau of Land Management, Winnemucca Field Office.

Supplementary Rules for the Black Rock Desert-High Rock Canyon Emigrant Trails National Conservation Area and Associated Wilderness, and Other Contiguous Lands in Nevada:

Under 43 CFR 8365.1–6, the Bureau of Land Management establishes the following supplementary rules on all public lands within the Black Rock Desert-High Rock Canyon Emigrant Trails National Conservation Area and Associated Wilderness, and Other Contiguous Lands in Nevada Resource Management Plan (RMP) boundary as shown in the RMP at Section 1.3 and as shown at Map 1.1, RMP Reference Map.

Section 1, Prohibited Acts/Rules

1. Unless posted or prohibited, you may pull off designated roads and trails a maximum of 50 feet from the center of the road/trail for parking or camping if damage to vegetation will be minimal and new parallel roads will not be created.

2. You must not possess, destroy, deface, dig, or remove petrified wood, common invertebrate fossils, rocks or minerals without a permit in an area otherwise closed to collecting these resources.

3. You must not collect petrified wood, common invertebrate fossils, rocks or minerals with motorized equipment.

4. You must not collect more than 25 pounds per day plus one piece, with a maximum collection of 250 pounds per year, of petrified wood, common invertebrate fossils, rocks, and minerals.

5. You must not rock climb within the boundaries of the High Rock Canyon Area of Critical Environmental Concern (ACEC).

6. You must not camp with a vehicle anywhere other than in designated sites in the following areas: High Rock Canyon ACEC, the Lahontan Cutthroat Trout Area, Class A and B trail segments of the Emigrant Trails, Stevens Camp, Trego Hot Springs, Massacre Ranch and Mud Meadows areas, and the front country management zone with the exception of the Black Rock Desert playa.

7. You must not build, maintain or use a campfire on the Black Rock Desert playa or adjacent dune areas without the use of a surface protecting device.

8. You must not camp outside designated sites within the Soldier Meadows ACEC.

9. You must not camp within 100 yards of a water hole in such a manner that wildlife or domestic stock will be denied access to such water, unless campsites are designated by the BLM within this 100 yard area.

10. An authorization by the authorized officer, whether by permit or other written means to use public lands in the NCA, associated wilderness, and other contiguous lands, may contain reasonable restrictions necessary to preserve and protect public lands and their resources, and to minimize interference with and inconvenience to other visitors. You must follow the terms, conditions, and stipulations of your authorization.

Section 2, Definitions

Camping—Erecting a tent or a shelter of natural or synthetic material, preparing a sleeping bag or other bedding material for use, or parking of a motor vehicle, motor home, or trailer for the purpose or apparent purpose of overnight occupancy.

Camp with a vehicle—Parking of a motor vehicle, motor home, or trailer for the purpose or apparent purpose of overnight occupancy within one-fourth mile of the parked vehicle, motor home, or trailer.

Common invertebrate fossil—Any fossilized marine life form without a spinal column, including but not limited to snails, corals, diatoms, and clams.

Designated site—Specific location identified by the BLM for camping or other purposes.

Designated roads and trails—Roads and trails open to motorized vehicle use and identified on a map of designated roads and trails that is maintained and available for public inspection at the Winnemucca Field Office, Winnemucca, Nevada and the Surprise Field Office, Cedarville, California. Designated roads and motorized trails are open to public use in accordance with such limits and restrictions as are or may be specified in the RMP or in future decisions implementing the RMP. However, any road or trail with any restrictive signing or physical barrier, including gates, posts, branches, or rocks intended to prevent use of the road or trail is not a

designated motorized road or motorized trail.

Management zone—The three administrative designations (Front Country, Rustic, and Wilderness) into which the NCA, associated wilderness, and contiguous lands have been divided for management purposes as depicted on the Visitor Use Management Zones Map (RMP, map 2–13). Each management zone has a unique set of objectives and management decisions as described below.

- *Front country zone*—A management zone encompassing those lands that are intended to be the focal point for visitation where visitor accommodations would be made to provide primary interpretation, overlooks, trails, and associated facilities necessary to highlight resources and features of the NCA.
- *Rustic zone*—Those lands that are intended to provide an undeveloped, primitive, and self-directed visitor experience while accommodating motorized and mechanized access on designated routes, and where facilities are rare and provided only where essential for resource protection.
- *Wilderness zone*—Those lands that are intended to provide an undeveloped, primitive, and self-directed visitor experience without motorized or mechanized access and where facilities are nonexistent.

Minimal vegetation damage—rushing by foot or vehicle tires or the physical removal with hand tools of herbaceous vegetation or woody vegetation less than 18 inches tall necessary for the parking of one or more motorized vehicles, establishment of a campsite, or providing for a safe campfire. The physical removal or damage of woody vegetation taller than 18 inches is considered more than minimal damage.

Motorized equipment—Any machine that uses or is activated by a motor, engine, or other non-living power source.

Motorized vehicle—Any vehicle that is self-propelled by a non-living power source, including electric power, but not operated upon rails or upon water.

Rock climbing—Ascending or descending a rock face using rope and devices such as pitons, bolts, chocks, camming devices and webbing.

Surface protecting device—A device to prevent campfires from coming into direct contact with the ground surface, such as an elevated platform, open grill, fire blanket, or fire pan for the purpose of preventing fire scars on the surface of the Black Rock Desert playa.

Vehicle—Every device in, upon, or by which a person or property is or may be transported or drawn on land, except devices used exclusively upon stationary rails or track.

Water hole—Any source of drinking water for livestock, wildlife, wild horses, and burros including but not limited to wildlife guzzlers, stock tanks, watering troughs, natural springs, and seeps.

Penalties

Under section 303(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1733(a) and 43 CFR 8360.0–7 and 8365.1–6, violation of any of these supplementary rules on public lands within the boundaries established in the rules, may result in a trial before a United States Magistrate and may be punishable by a fine of no more than $1,000, or imprisonment for no more than 12 months, or both. Such violations may also be subject to the enhanced fines provided by 18 U.S.C. 3571(b)(5).

Authority: 43 U.S.C. 1740 and 43 CFR 8365.1–6.

Dated: May 9, 2008.

Ron Wenker,

BLM State Director, Nevada.

Dated: May 7, 2008.

Mike Pool,

BLM State Director, California.

[FR Doc. E8–15172 Filed 7–7–08; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–923–1310–FI; WYW143963]

Wyoming: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement from Prima Exploration, Inc., Gunlikson Petroleum, Inc., and Niwot Resources, LLC for competitive oil and gas lease WYW143963 for land in Converse County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Pamela J. Lewis, Chief, Branch of Fluid Minerals Adjudication, at (307) 775–6176.

SUPPLEMENTARY INFORMATION: The lessees have agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, per year, and 16⅔ percent, respectively. The lessees have paid the required $500 administrative fee and $163 to reimburse the Department for the cost of this **Federal Register** notice. The lessees have met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW143963 effective February 1, 2008, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. BLM has not issued a valid lease affecting the lands.

Pamela J. Lewis,

Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. E8–15423 Filed 7–7–08; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–030–1430–FR; WYW 0323440]

Notice of Realty Action: Recreation and Public Purposes Act Classification of Public Lands in Carbon County, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) has examined and found suitable for classification for conveyance under the provisions of the Recreation and Public Purposes (R&PP) Act, as amended, approximately 140 acres of public land in Carbon County, Wyoming. The City of Rawlins proposes to continue the use of the land as the Rawlins landfill.

DATES: Interested parties may submit comments regarding the proposed conveyance or classification of the lands until *August 22, 2008.*

ADDRESSES: Send written comments to the Field Manager, Rawlins Field Office, 1300 North Third Street, Rawlins, Wyoming 82301.

FOR FURTHER INFORMATION CONTACT: Patrick Madigan, Field Manager, Bureau of Land Management, Rawlins Field Office, at (307) 328–4200.

SUPPLEMENTARY INFORMATION: In accordance with Section 7 of the Taylor Grazing Act, (43 U.S.C. 315f), and Executive Order No. 6910, the following described public land in Carbon County, Wyoming, has been examined and

found suitable for classification for conveyance under the provisions of the R&PP Act, as amended, (43 U.S.C. 869 *et seq.*):

Sixth Principal Meridian, Wyoming

T. 22 N., R. 87 W.,
Sec. 34, N½SE¼E½SW¼SE¼,SE¼SE¼.
The land described contains 140 acres, more or less.

The above described public land was previously classified for lease only under the R&PP Act on August 22, 1966, and has been leased to the City of Rawlins for landfill purposes since December 15, 1966.

In accordance with the R&PP Act, the City of Rawlins filed an application for the above-described 140 acres of public land to be conveyed to Rawlins for continued use as the Rawlins landfill. Additional detailed information pertaining to this application, plan of development, and site plan is in case file WYW 0323440, located in the BLM Rawlins Field Office at the above address.

The land is not needed for any Federal purpose. The conveyance is consistent with the Rawlins Resource Management Plan and would be in the public interest. The patent, when issued, will be subject to the provisions of the R&PP Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945); and

2. All minerals, together with the right to prospect for, mine, and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

The patent will be subject to all valid existing rights documented on the official public land records at the time of patent issuance.

On August 22, 1966, the land described above was segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for conveyance under the R&PP Act, leasing under the mineral leasing laws, and disposals under the mineral material disposal laws. The conveyance classification continues the existing segregative effect.

Classification Comments: Interested parties may submit comments involving the suitability of the land for a landfill. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision to convey under the R&PP Act, or any other factor not directly related to the suitability of the land for R&PP use.

Confidentiality of Comments: Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Only written comments submitted by postal service or overnight mail to the Field Manager—BLM Rawlins Field Office will be considered properly filed. Electronic mail, facsimile or telephone comments will not be considered properly filed.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the land described in this notice will become effective September 8, 2008. The lands will not be available for conveyance until after the classification becomes effective.

Authority: 43 CFR part 2740.

Dated: June 18, 2008.

Patrick Madigan,

Field Manager, Rawlins, WY.

[FR Doc. E8–15366 Filed 7–7–08; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf (OCS), Alaska OCS Region, Cook Inlet Planning Area, Proposed Oil and Gas Lease Sale 211 for OCS Oil and Gas Leasing Program for 2007–2012

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Request for Interest.

SUMMARY: The OCS Oil and Gas Leasing Program for 2007–2012 identifies two potential ''special-interest'' sales for the Cook Inlet Planning Area in Alaska. The Cook Inlet area is a proven oil and gas province, but past industry interest in the federal offshore area has been limited.

The amount of oil and gas produced in Cook Inlet continues to decline and with changing economic conditions there is renewed interest in finding additional hydrocarbon resources for the South Central Alaska.

This Request for Information (RFI) seeks to determine the level of industry interest, whether it is focused on a few blocks or prospects or if there is industry interest in a larger portion of the planning area.

We are also seeking comments from tribal, local, State, and Federal agencies, and the general public to evaluate whether MMS should proceed with further evaluations pursuant to the Outer Continental Shelf Lands Act (OCSLA), the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA), the Coastal Zone Management Act (CZMA) and all other applicable laws and regulations. We will consider the level of industry interest and other issues and concerns reflected in comments in our determination on how to proceed. The decision to proceed with further evaluation of this special interest sale or to issue another RFI in 2009 will be made after consideration of the comments received and the indication of industry interest in response to this RFI. This RFI does not indicate a preliminary decision to lease in the Program Area.

DATES: Responses to the RFI on proposed Cook Inlet Sale 211 must be received no later than October 6, 2008. Submittals should be labeled ''Comments on Proposed Special-Interest Sale 211.''

FOR FURTHER INFORMATION CONTACT: Please contact Dr. Cleve Cowles, Regional Supervisor, Office of Leasing and Environment, Minerals Management Service, Alaska OCS Region, 3801 Centerpoint Drive, Suite 500, Anchorage, Alaska 99503–5820, phone (907) 334–5233, regarding questions on the RFI for this special interest sale.

Request for Information

1. *Authority:* This RFI is published pursuant to the OCSLA as amended (43 U.S.C. 1331–1356, (1994)), and the regulations issued thereunder (30 CFR 256); and in accordance with the 5-Year OCS Oil and Gas Leasing Program for 2007–2012.

2. *Purpose of RFI:* This RFI seeks to determine the level of industry interest; whether it is focused on a few blocks or prospects; or if there is industry interest in a larger portion of the planning area. We are also seeking comments from tribal, local, State, and Federal agencies

and the general public to evaluate whether MMS should proceed with further evaluations pursuant to the OCSLA, NEPA, ESA, Coastal Zone Management Act (CZMA) and all other applicable laws and regulations.

This information-gathering step is important for ensuring that all pertinent information is provided in response to this RFI so it can be assessed in determining whether to proceed with further evaluation of the ''special-interest'' leasing process pursuant to the OCSLA and regulations at 30 CFR part 256 or whether MMS should reissue another RFI in 2009. A ''special-interest'' leasing option allows MMS to consider for further evaluation a very focused (or larger) area of the Cook Inlet Program Area. If companies are interested, they should identify the specific blocks of interest to MMS in writing to the Regional Supervisor, Office of Leasing and Environment, ATTN: Cook Inlet RFI, Alaska OCS Region, Minerals Management Service, 3801 Centerpoint Drive, Ste. 500, Anchorage, Alaska 99503–5823. If companies believe a larger area should be considered, they should explicitly explain their interest, including a summary of the geologic and economic information about the larger area. This letter of interest may include maps, and should include a company contact name, address, and phone number(s) if MMS needs additional information or clarification.

As part of this information gathering request, we are also seeking comments and supporting information from tribal, local, State, and Federal agencies and the general public to determine whether MMS should consider any further evaluation of a focused area or larger portion of the Cook Inlet Program Area pursuant to the OCSLA and other applicable laws and regulations. After the 90-day RFI comment period closes, MMS will decide whether to continue the process after considering the comments received. If industry interest reflected in comments to the RFI does not support further evaluation at this time a RFI will be issued again in 2009 and yearly thereafter through the 5-year schedule until a sale is held or the 5-year schedule expires. If sufficient industry interest is received during the RFI process, including nominations of specific blocks in response to the RFI and after reviewing and considering the other information provided, MMS may recommend to the Assistant Secretary, Land and Minerals Management (ASLM) whether the sale process should be continued as well as the size of the area to be considered for further evaluation (Area Identification). Following Area Identification, the Alaska OCS Region will prepare the appropriate NEPA analysis of potential environmental effects of oil and gas exploration, development, and production in the proposed sale area and its vicinity.

3. *Background and Description of the Area:* Four Federal sales have been held in the Cook Inlet Planning Area. In October 1977, Sale CI resulted in 88 leases being issued. In September 1981, Sale 60 resulted in 13 leases being issued. A reoffering sale, Sale RS–2, was held in August 1982, but no bids were received and no leases resulted from this sale. Sale 149, held in June 1997 resulted in 2 leases issued. In June 2002, the Department of the Interior issued the OCS Oil and Gas Leasing Program for 2002–2007. Two Cook Inlet Sales, 191 and 199, were included. The EIS for Sales 191 and 199 was issued in December 2002, and all other pre-sale steps completed by early 2004. The sale was scheduled for May 2004. However, no bids were submitted for Sale 191. The MMS issued other solicitations to determine industry interest in Cook Inlet, but company interest remained low. Lease Sale 199 was canceled.

Over the years, there have been 13 exploratory wells drilled on Federal leases in Cook Inlet and all have been permanently plugged and abandoned. Two leases from Sale 149 (part of the Cosmopolitan Unit) are under suspension of operations. Exploration activities for the unit are occurring from onshore. The Alaska OCS Region document ''Undiscovered Oil and Gas Resources, Alaska Federal Offshore, December 2006 Update'' estimates the mean undiscovered technically recoverable resources for the planning area at 1.01 billion barrels of oil and condensate and 1.2 trillion cubic feet of gas. *http://www.mms.gov/alaska/re/reports/2006Asmt/index.HTM.*

The Cook Inlet Program Area is located offshore the State of Alaska just south of Kalgin Island and the Barren Islands and continues south through Shelikof Strait to just above the southern tip of Kodiak Island (see attached map). The Cook Inlet Program Area consists of approximately 1,093 whole and partial blocks covering about 2.1 million hectares (about 5.3 million acres). It extends offshore from 3 to approximately 60 nautical miles in water depths from about 30 feet to approximately 650 feet. A page-size map of the Program Area accompanies this RFI. A large scale RFI map showing the boundaries of the Program Area on a block-by-block basis is available on the MMS Web site at *http://www.mms.gov/alaska/cproject/cookinlet211/index.htm.* Official Protraction Diagrams numbers located in the Cook Inlet Planning Area are identified on both the page-sized and large-scale Call maps available for no charge at the Web site: *http://www.mms.gov/ld/alaska.htm.*

4. *Instructions on RFI:* Specific nominations demonstrating industry interest are being sought regarding the oil and gas industry area(s) of interest for potential exploration and development and production. Comments on the RFI are requested concerning any environmental, social, or economic information or issues commenters believe will assist the MMS in making its decision.

Responses to this RFI must be received by October 6, 2008. Submittals should indicate ''Responses to RFI for Proposed Cook Inlet Special-Interest Lease Sale 211.'' The RFI Map nominations and specific indications of interest, and/or comments must be submitted to the Regional Supervisor, Leasing and Environment as noted below.

The RFI may be submitted by any one of the following methods:

- Mail or hand-deliver comments to the Regional Supervisor, Office of Leasing and Environment; ATTN: Cook Inlet RFI; Alaska OCS Region, Minerals Management Service; 3801 Centerpoint Drive, Suite 500; Anchorage, Alaska 99503–5823.
- Submit comments by Internet through MMS Public Connect at *http://ocsconnect.mms.gov/pcs-public/.*
- Fax comments to the Regional Supervisor, Office of Leasing and Environment; Alaska OCS Region, Minerals Management Service at (907) 334–5242.

Please submit Internet comments as an ASCII file, avoiding the use of special characters and any form of encryption. Please also include your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, please contact us directly at 1–800–764–2627.

Company comments about specific levels of interest and/or specific areas of interest will be considered proprietary and confidential information, although the identities of those submitting nominations become a matter of public record. To avoid inadvertent release of proprietary information, please mark all documents ''Confidential—Contains Proprietary Information'' on every page containing such information. Respondents are requested to comment on the area of the Federal boundaries of the Cook Inlet Planning Area.

Respondents should rank areas in which they have nominations according

to priority of interest; for example, priority 1 (high) or 2 (medium) on a large-sale RFI map available at *http://www.mms.gov/cproject/cookinlet211/index.htm.* Respondents are encouraged to be specific in indicating blocks by priority and be prepared to discuss their range of interest and activity regarding the nominated area(s). Please provide the telephone number and name of a person to contact in the organization's response. The Alaska OCS Regional Office may contact this person to set up a mutually agreeable meeting to more fully review the company's level of interest.

Comments and information are sought from all interested parties about particular geological (including natural hazard areas), environmental, biological, archaeological, and socioeconomic conditions or potential conflicts, or other information that might bear upon the potential leasing, exploration, and development of the program area and vicinity. Comments and information are also sought on possible conflicts between future OCS oil and gas activities that may result from the proposed sale and the standards of the Alaska Coastal Management Program (CMP) and the enforceable policies of an approved local district coastal management plan. These comments should identify specific CMP policies of concern, the nature of the conflict foreseen, and steps that MMS could take to avoid or mitigate the potential conflict. Comments may be in terms of broad areas or restricted to particular blocks or areas of concern. Those submitting comments and information are requested to list block numbers or outline the subject area on the RFI Map. Our practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity, to the extent allowable by law. If you wish us to withhold your name or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Any specific information submitted by industry about their interest will remain proprietary when marked as such.

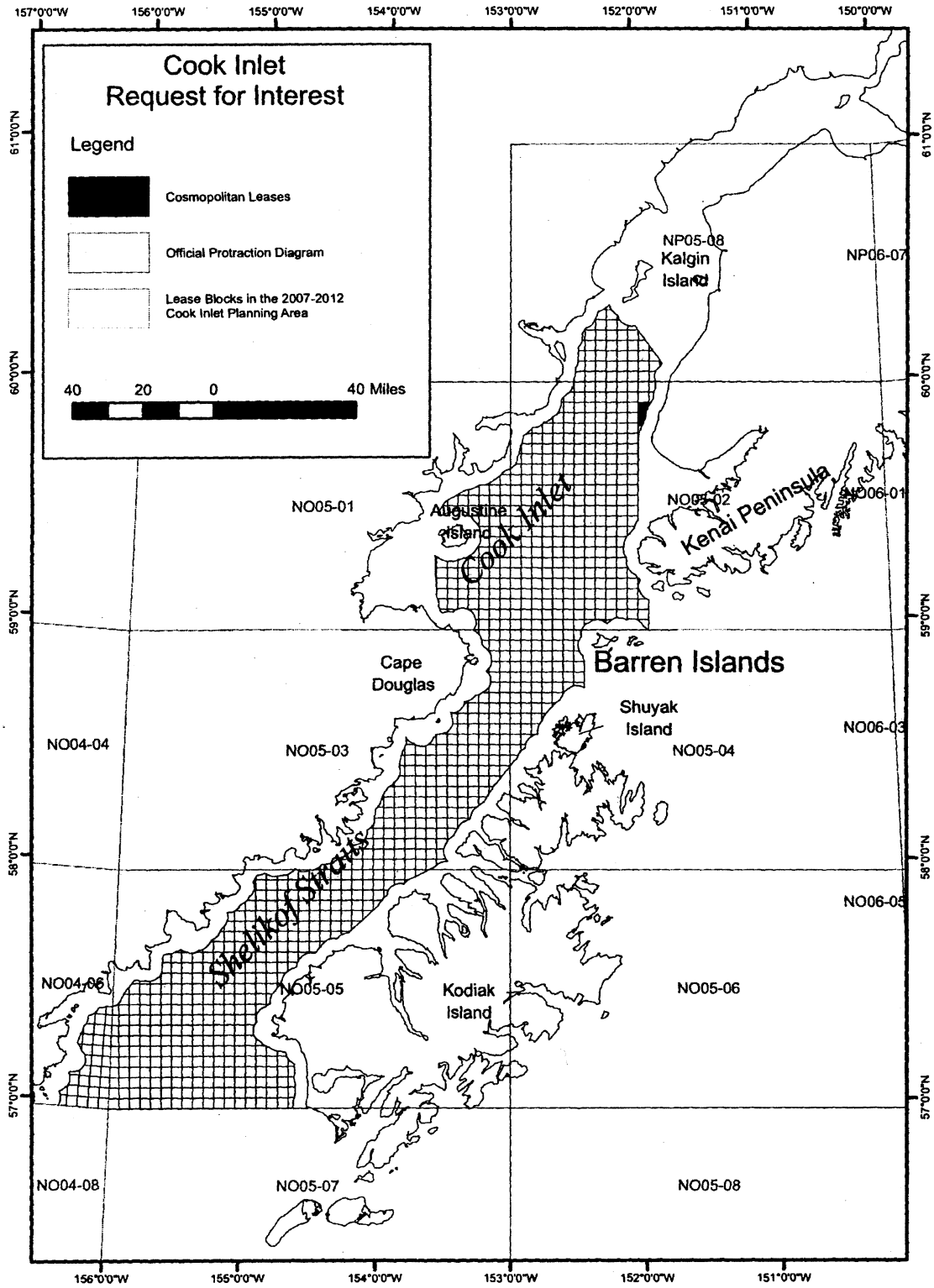
5. *Use of RFI Information:* Information submitted in response to this RFI will be used for several purposes. Responses will be used to:

—Determine whether to proceed with the leasing process for a special-interest oil and gas lease sale in the Cook Inlet Program Area;
—Identify specific areas of interest for oil and/or gas exploration and development;
—Identify potential environmental effects and potential use conflicts;
—Develop the appropriate level of environmental analysis needed if the level of industry interest is such that MMS recommends proceeding with the special-interest sale;
—Develop lease terms and conditions/mitigating measures; and
—Identify potential conflicts between oil and gas activities and the Alaska CMP.

6. *Existing Information:* An extensive environmental, social, and economic Studies Program has been underway in the Alaska OCS Region since 1976, including studies in this area. The emphasis has been on environmental characterization of biologically sensitive habitats, endangered whales and marine mammals, physical oceanography, ocean-circulation modeling, subsistence uses, and ecological and socio-cultural effects of oil and gas activities. Environmental Impact Statements were prepared for each of the OCS sales held in the Cook Inlet Planning Area.

Information on the MMS Environmental Studies Program, completed studies, and a program status report for continuing studies in this area are available on the MMS Web site *http://www.mms.gov/alaska/*, or may be obtained from the Chief, Environmental Studies Section, Alaska OCS Region, by telephone request at (907) 334–5230, or by written request to: Chief, Environmental Studies Section; ATTN: Cook Inlet RFI; Alaska OCS Region, Minerals Management Service; 3801 Centerpoint Drive, Suite 500; Anchorage, Alaska 99503–5823. A request may also be made via the Alaska OCS Region Web site to *akwebmaster@mms.gov*.

BILLING CODE 4310–MR–P



Dated: June 13, 2008.

Randall B. Luthi,

Director, Minerals Management Service.

[FR Doc. E8–15444 Filed 7–7–08; 8:45 am]

BILLING CODE 4310–MR–C

DEPARTMENT OF THE INTERIOR

National Park Service

Drafting of U.S. Nominations to the World Heritage List

AGENCY: Department of the Interior, National Park Service.

ACTION: Second Notice and Request for Comment

SUMMARY: This notice constitutes the Second Notice referred to in Sec. 73.7(c) of the World Heritage Program regulations (36 CFR Part 73), and sets forth the decision to request that draft World Heritage nominations for Papahanaumokuakea Marine National Monument, Hawaii, and Mount Vernon, Virginia, be prepared.

On March 19, 2008, the Department of the Interior requested public comment on whether any properties identified on the U.S. Tentative List should be nominated to the World Heritage List, and in particular whether Papahanaumokuakea Marine National Monument, Hawaii, and Mount Vernon, Virginia, should be nominated. After review of the comments provided by the public and consultation with the Federal Interagency Panel on World Heritage, the Department, in accordance with 36 CFR part 73, has selected Papahanaumokuakea National Monument and Mount Vernon as proposed nominations to the World Heritage List. With the assistance of the Department, the owners of these sites are encouraged to prepare complete nomination documents for the sites in accordance with 36 CFR Part 73 and the nomination format required by the World Heritage Committee. A discussion of the decision and comments received follows.

DATES: Draft World Heritage nominations for Papahanaumokuakea Marine National Monument and Mount Vernon must be prepared and submitted in substantially complete draft form to the National Park Service by July 15, 2008. (The World Heritage nomination format may be found at the World Heritage Centre Web site at *http://whc.unesco.org/en/nominationform*.) The National Park Service will coordinate the review and evaluation of the draft nominations.

Submission of interim draft nominations to the World Heritage Centre must be made by September 30, 2008. The Centre is to provide technical comments by November 14, 2008. The Federal Interagency Panel for World Heritage will review draft nominations in a phone conference tentatively scheduled for November 19, 2008. The Interagency Panel will evaluate the adequacy of the nominations, the significance of the properties and whether the nominations should be forwarded to the World Heritage Centre to be considered for listing. Final submittal to the World Heritage Centre by the Department of the Interior through the Department of State is required by January 30, 2009, if the properties are to be considered in the current cycle of nominations to the World Heritage List. Submittal of final nominations must be made no later than that date for the World Heritage Committee to be able to consider them at its annual meeting in the summer of 2010.

Protective measures must be in place before a property may be nominated. If a nomination cannot be completed in accordance with this timeline, work may continue into the following year(s) for subsequent submission to UNESCO.

The public is invited to comment on the decision to nominate the two sites up to and including 30 days from the publication of this notice.

ADDRESSES: Please provide all additional comments directly to Jonathan Putnam, Office of International Affairs, National Park Service, 1201 Eye Street, NW., (0050) Washington, DC 20005 or by E-mail to: *jonathan_putnam@nps.gov*. Phone: 202–354–1809. Fax 202–371–1446.

All comments will be a matter of public record and, if received in a timely manner, will be shared with property owners to assist in preparing the World Heritage nominations. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

FOR FURTHER INFORMATION CONTACT: Jonathan Putnam, 202–354–1809 or April Brooks, 202–354–1808. For summary information on the U.S. Tentative List and how it was developed, please see the March 19, 2008, **Federal Register** notice (Volume 73, Number 54, pages 14835–14838). Complete information about U.S. participation in the World Heritage Program and the process used to develop the Tentative List is posted on the Office of International Affairs Web site at: *http://www.nps.gov/oia/topics/worldheritage/tentativelist.htm.*

Only the 14 properties currently included in U.S. Tentative List are eligible to be considered for nomination by the United States to the World Heritage List. Brief descriptions of the properties appear in a copy of the press release announcing the Tentative List, which is linked to the site just noted above. The U.S. Tentative List report on the 14 sites in the form submitted to the UNESCO World Heritage Centre on January 24, 2008, appears in its entirety on the Internet at *http://www.nps.gov/oia/topics/worldheritage/tentativelist/WHTentList.doc.* The full applications submitted to the National Park Service for the candidate sites can be viewed at *http://www.nps.gov/oia/NewWebpages/ApplicantsTentativeList.html.*) To request paper copies of documents discussed in this notice, please contact April Brooks, Office of International Affairs, National Park Service, 1201 Eye Street, NW., (0050) Washington, DC 20005. E-mail: *April_Brooks@nps.gov*.

Summary of Public Comments: On March 19, 2008, the Department published the new Tentative List, which consists of properties that appear to qualify for World Heritage status and which may be considered for nomination by the United States to the World Heritage List, in the **Federal Register** (Volume 73, Number 54, pages 14835–14838), along with the request for public comment on the Papahanaumokuakea Marine National Monument, Mount Vernon, and the twelve other sites on the List. Comments were accepted through April 3, fifteen days after the date of publication of the notice in the **Federal Register**. Respondents were asked to address the qualifications of the Tentative List properties for nomination by the United States to the World Heritage List.

A summary of the 19 public comments on the proposal to prepare nominations of sites from the Tentative List in 2008 appears below, along with the Department's responses as appropriate. The comments were also available to the Federal Interagency Panel on World Heritage and to the Department of the Interior officials who have selected the initial U.S. World Heritage nominations. The full texts of all the comments are available upon request.

In some cases, respondents offered site-specific or general comments that addressed other issues, such as the merits of particular properties and advice on and priorities for revision of the Tentative List. Those comments have been retained and will remain on file to be considered in due course.

Sites on the Tentative List for which no specific comments were received

regarding their nomination this year are not discussed.

Cultural Sites

Mount Vernon, Virginia

The Accokeek Foundation, a Virginia State Senator and two members of the Virginia House of Delegates expressed their strong support of the proposed nomination. US/ICOMOS expressed doubts about the prospects that the World Heritage Committee will find that the Mount Vernon site meets the World Heritage criteria. The Department acknowledges this concern and has provided Mount Vernon management with the comments.

Poverty Point National Monument and State Historic Site, Louisiana

Four Members of Congress wrote to recommend that this site be nominated this year. The Department believes that the two other sites being proposed for this year would better diversify the portfolio of United States sites.

US/ICOMOS recommended that this site be considered as part of a serial or joint nomination with other similar sites.

San Antonio Franciscan Missions, Texas

The San Antonio Conservation Society wrote in strong support of this site being nominated.

US/ICOMOS proposed this site as an alternative nomination to Mount Vernon. The Department will consider this recommendation for future years.

One respondent expressed concerns about the name of this proposed nomination and desires that the Native American role at the missions be fully and sensitively emphasized in any nomination, including in its name. This recommendation will be taken into account. Another respondent expressed his concern that the Alamo not come under United Nations authority. The United Nations does not have any role in the management of existing or potential U.S. World Heritage sites.

Mixed Natural and Cultural Site

Papahanaumokuakea Marine National Monument, Hawaii

Strongly supportive comments for this site were received from US/ICOMOS, the Trust for Public Land and several individuals. US/ICOMOS also recommended that consideration be given to treatment of the Battle of Midway and its associated shipwrecks and aircraft. This important history will be included in appropriate descriptive and historical sections of the nomination but will not be treated as a primary basis for nomination under the World Heritage cultural criteria.

The Western Pacific Regional Fishery Management Council (WPRFMC) recommended that Papahanaumokuakea not be nominated, based on their concerns that World Heritage designation would lead to increased tourism and associated impacts on the Monument's natural resources. The Department understands that the Monument does not plan to increase visitation to the site, nor does World Heritage designation require public access.

WPRFMC also expressed concerns about the National Park Service becoming involved in the management of the Monument. The National Park Service will not be involved in the Monument's management.

WPRFMC requested additional time for comment and stated doubts regarding the extent of support in Hawaii for the proposed nomination.

The Department anticipates that the co-trustees of the Monument (the State of Hawaii, the U.S. National Oceanic and Atmospheric Administration and the U.S. Fish and Wildlife Service) will address the concerns raised by the WPRFMC during the balance of the year as the World Heritage nomination is being prepared. Also, as noted elsewhere, the National Park Service will continue to take comments on the two proposed draft nominations up to and including 30 days from the publication of this notice.

Recommendations of the Federal Interagency Panel for World Heritage

The Federal Interagency Panel for World Heritage assists the Department of the Interior in implementing the Convention by making recommendations on U.S. World Heritage policy, procedures, and nominations. The Panel is chaired by the Assistant Secretary for Fish and Wildlife and Parks and includes representatives from various Federal Departments and agencies with Federal land management and policymaking responsibilities. The Panel made its recommendations to the Department on the U.S. Tentative List in a conference call on April 8, 2008.

The Panel agreed by consensus to support the preparation of a nomination this year for Papahanaumokuakea Marine National Monument. It took note of the comments and concerns raised by the Western Pacific Regional Fishery Management Council and were informed that those comments would be shared with the co-trustees of the site who intend to draft a nomination.

Regarding Mount Vernon, the Panel acknowledged that it shared the concerns voiced by a few public respondents about the prospects for completing a nomination of Mount Vernon this year that would successfully address the World Heritage criteria. The World Heritage Committee's practice of generally discouraging the listing of sites associated with prominent individuals was referenced in that regard. It was agreed that those concerns would be shared with the Mount Vernon staff who are working on the proposed nomination. It was also noted that the property has considerable importance as an historic landscape important in colonial history and as a prime illustration of plantation life and economy, but that more documentation may be needed to establish its preeminence in that regard. After discussion, the Panel concurred in the effort to draft a nomination for Mount Vernon.

The Panel reviewed the public suggestions for nominations for other properties this year from the U.S. Tentative List but did not recommend the preparation of nominations for any additional or alternate properties. It was acknowledged that, although the United States is eligible to nominate two sites this year, it might be preferable to submit only one nomination. Panel members emphasized concern that it would be undesirable to have any of the first nominations made by the United States since 1994 be unsuccessful.

The Panel's next meeting this fall (tentatively scheduled for November 19, 2008) will review and recommend on draft nominations for Papahanaumokuakea Marine National Monument and Mount Vernon, if they are completed on schedule.

In addition, in response to certain public comments and the opinions of Panel members, the Panel agreed to place the topic of the process for future revisions of the U.S. Tentative List, noting specific comments in that regard by US/ICOMOS, on the agenda for the Panel's next meeting.

Decision To Encourage the Preparation of Two U.S. World Heritage Nominations

The Department considered both public comments received during the comment period and the advice of the Federal Interagency Panel for World Heritage in making the decisions to draft two U.S. World Heritage nominations. Both properties meet the initial prerequisites for nomination by the United States to the World Heritage List. They appear to meet one or more of the

World Heritage criteria and all owners support the nomination of these nationally significant properties to the World Heritage List.

Brief descriptions are provided for these potential nominations. The Department will make final decisions on whether to nominate these two sites to the World Heritage List based on complete draft World Heritage nominations for them. The Department encourages all interested parties to comment and make recommendations as the nomination process continues.

Draft World Heritage nominations will be requested for the following sites:

Papahanaumokuakea Marine National Monument, Hawaii

This 1,200-mile-long string of islands, atolls, coral reefs and adjacent waters, running northwest from the main Hawaiian islands and encompassing over 89 million acres, is one of the world's largest and most significant marine protected areas. Scattered in the deep ocean are some 10 small islands along with extensive reefs and shoals. In this remote and still relatively pristine part of the Pacific, marine life flourishes, and the area is home to a large number of species found nowhere else in the world, including a wide array that are threatened and endangered. Large populations of seabirds nest on isolated sandy shores and the waters harbor impressive numbers of large predatory fish. The geology of the islands is also highly significant—the chain represents the longest, clearest, and oldest example of island formation and atoll evolution in the world.

Native Hawaiians reached these islands at least 1,000 years before any other people and established settlements on some of them. The islands, along with their significant archeological sites, retain great cultural and spiritual significance to Native Hawaiians. Midway Atoll and its environs was also the site of a major battle of World War II.

Papahanaumokuakea Marine National Monument is selected for nomination because, among other factors, it will, as a marine site and a mixed cultural and natural site in the Pacific, fill conspicuous gaps in the United States portfolio of World Heritage Sites. Similar gaps likewise exist in the World Heritage List as a whole, wherein few marine, Pacific, or mixed sites are listed. Its merits on both cultural and natural criteria are regarded as particularly outstanding. In addition, its co-trustees (the State of Hawaii, the U.S. Fish and Wildlife Service, and the U.S. National Oceanic and Atmospheric Administration) strongly support its nomination and have assembled a team to prepare the documentation.

Mount Vernon, Virginia

George Washington's long-time home, with its associated gardens and grounds, forms a remarkably well-preserved and extensively documented example of a plantation landscape of the 18th-century American South. Mount Vernon also has importance in the history of agronomy.

It was based on English models but modified and adapted to its American context, which included slave labor as an economic basis. There is a core of 16 surviving 18th-century structures set in a landscape of gardens, fences, lanes, walkways, and other features, situated along the Potomac River, that changed and developed over many years in Washington's family. The Mount Vernon Ladies' Association, which has owned and maintained the property for 150 years, is strongly supportive of the site's nomination to the World Heritage List.

George Washington's Mount Vernon is being selected for the drafting of a World Heritage nomination primarily because it likewise could fill a significant gap in the U.S. cultural site list. Colonial expressions of architecture and landscape are also poorly represented on the World Heritage List as a whole. Mount Vernon is a particularly outstanding example of a type of colonial landscape that was tied to the plantation economy based on slavery that prevailed in the American South during the colonial and early Federal periods. It is also the primary illustration of the early historic preservation movement in the United States.

SUPPLEMENTARY INFORMATION:

Background

The World Heritage List is an international list of cultural and natural properties nominated by the signatories to the World Heritage Convention (1972). The United States was the prime architect of the Convention, an international treaty for the preservation of natural and cultural heritage sites of global significance proposed by President Richard M. Nixon in 1972, and the United States was the first nation to ratify it. In 2005, the United States was elected to a fourth term on the World Heritage Committee and will serve until 2009. The Committee, composed of representatives of 21 nations elected as the governing body of the World Heritage Convention, makes the final decisions on which nominations to accept on the World Heritage List at its annual meeting each summer.

There are 851 sites in 140 of the 185 signatory countries. Currently there are 20 World Heritage Sites in the United States.

U.S. participation and the roles of the Department of the Interior and the National Park Service are authorized by Title IV of the Historic Preservation Act Amendments of 1980 and conducted in accordance with 36 CFR 73—World Heritage Convention. The National Park Service provides the technical and staff support to the Assistant Secretary for Fish and Wildlife and Parks, who has the lead role for the U.S. Government in the implementation of the Convention. The National Park Service manages all or parts of 17 of the 20 U.S. World Heritage Sites currently listed, including Yellowstone National Park, Everglades National Park, and the Statue of Liberty.

A Tentative List is a national list of natural and cultural properties appearing to meet the World Heritage Committee eligibility criteria for nomination to the World Heritage List. A country cannot nominate a property unless it has been on its Tentative List for a minimum of a year. Countries are limited to nominating no more than two sites in any given year.

Neither inclusion in the Tentative List nor inscription as a World Heritage Site imposes legal restrictions on owners or neighbors of sites, nor does it give the United Nations any management authority or ownership rights in U.S. World Heritage Sites, which continue to be subject exclusively to U.S. law. Inclusion in the Tentative List merely indicates that the property may be further examined for possible World Heritage nomination in the future.

The World Heritage Committee's Operational Guidelines ask participating nations to provide Tentative Lists, which aid in evaluating properties for the World Heritage List on a comparative international basis and help the Committee to schedule its work over the long term. The Guidelines recommend that a nation review its Tentative List at least once every decade.

In order to guide the U.S. World Heritage Program effectively and in a timely manner, the National Park Service prepared and submitted (through the Secretary of the Interior and the Secretary of State) a new Tentative List to the World Heritage Centre of UNESCO on January 24, 2008. Submittal of nominations must be made no later than January 30, 2009, for the World Heritage Committee to be able to consider them at its annual meeting in the summer of 2010.

Authority: 16 U.S.C. 470 a–1, a–2, d; 36 CFR 73.

Lyle Laverty,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E8–15402 Filed 7–7–08; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

Federal Land Managers' Air Quality Related Values Work Group (FLAG)

AGENCY: National Park Service, Interior.

ACTION: Notice of availability.

SUMMARY: The National Park Service, in cooperation with the U.S. Fish and Wildlife Service and the U.S. Department of Agriculture Forest Service, is announcing the availability of, and accepting comments on, the draft *FLAG Phase I Report—REVISED.*

The *F*ederal *L*and Managers' *A*ir Quality Related Values Work *G*roup (FLAG) was formed (1) to develop a more consistent and objective approach for the Federal Land Managers (FLMs), *i.e.*, National Park Service, U.S. Fish and Wildlife Service, and U.S. Department of Agriculture Forest Service, to evaluate air pollution effects on their air quality related values (AQRVs); and (2) to provide State permitting authorities and potential permit applicants consistency on how to assess the impacts of new and existing sources on AQRVs. The FLAG effort focuses on the effects of the air pollutants that could affect the health and status of resources in areas managed by the three agencies, primarily such pollutants as ozone, particulate matter, nitrogen dioxide, sulfur dioxide, nitrates, and sulfates. FLAG formed subgroups that concentrated on four issues: (1) Terrestrial effects of ozone; (2) aquatic and terrestrial effects of wet and dry pollutant deposition; (3) visibility; and (4) process and policy issues. In December 2000, after undergoing a public review and comment process that included a 90-day public comment period announced in the **Federal Register** and a public meeting, the FLMs published a final Phase I report (FLAG 2000), along with an accompanying ''Response to Public Comments'' document.

FLAG 2000 has been a useful tool to the FLMs, State permitting authorities, and permit applicants. It was intended to be a working document that would be revised as necessary as the FLMs learn more about how to better assess the health and status of AQRVs. Based on knowledge gained and regulatory developments since FLAG 2000, the FLMs believe certain revisions to FLAG 2000 are now appropriate. The draft revised report now available for public review and comment (FLAG 2008) reflects those changes. The most significant changes proposed in the draft FLAG 2008 revision are summarized as follows:

- Adopts similar criteria derived from EPA's 2005 Best Available Retrofit Technology (BART) guidelines for the Regional Haze Rule to screen out from AQRV review those sources with relatively small amounts of emissions located a large distance from a Class I area (*i.e.*, Q/D ≤ 10).
- Utilizes the most recent EPA estimates to determine average annual and 20% best natural visibility conditions for Class I areas, using the new EPA-approved algorithm.
- Adopts criteria derived from the 2005 BART guidelines that utilizes monthly average relative humidity adjustment factors to minimize the affects of weather events (*i.e.*, short-term meteorological phenomena) on modeled visibility impacts.
- Adopts criteria derived from the 2005 BART guidelines that sets a 98th percentile value to screen out roughly seven days of haze-type visibility impairment per year.
- Includes deposition analysis thresholds and concern thresholds for nitrogen and sulfur deposition impacts on vegetation, soils, and water.
- Increases transparency and consistency of factors considered for adverse impact determinations.

The agencies are soliciting comments on the merits of adopting the EPA BART approach in assessing new source impacts to the federal lands that they administer. For example, the agencies are soliciting comments on exclusively using monthly relative humidity adjustment factors (parallel to Method 6 in the CALPUFF post processor) or also allowing an option for the use of short-term average relative humidity adjustment factors (parallel to Method 2 in the CALPUFF post processor used in FLAG 2000).

DATES: Written comments on the FLAG 2008 draft report must be received by September 8, 2008.

If there is sufficient interest, the FLMs will conduct a public meeting to discuss the proposed changes to the FLAG report. Please contact John Bunyak at the address below if you would like the FLMs to conduct such a public meeting.

ADDRESSES: A copy of the draft *FLAG Phase I Report—Revised* can be obtained from John Bunyak or downloaded from the Internet at: *http://www2.nature.nps.gov/air/permits/flag/index.cfm.*

Mail comments to: John Bunyak, Air Resources Division, National Park Service, P.O. Box 25287, Denver, Colorado 80225. E-mail comments can be sent to *john_bunyak@nps.gov*.

FOR FURTHER INFORMATION CONTACT: John Bunyak at the above address or by calling (303) 969–2818.

Dated: June 26, 2008.

John Bunyak,

Acting Chief, Air Resources Division.

[FR Doc. E8–15397 Filed 7–7–08; 8:45 am]

BILLING CODE 4312–25–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before June 21, 2008. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by July 23, 2008.

J. Paul Loether,

Chief, National Register of Historic Places/National, Historic Landmarks Program.

ARKANSAS

Arkansas County

Crocketts Bluff Hunting Lodge, End of dirt Rd. N. of pt. at which Hwy. 153 turns S., Crocketts Bluff, 08000723.

Miller County

Adams, Wallace, Service Station (Historic Buildings of Texarkana, Arkansas, MPS), 523 E. 23rd St., Texarkana, 08000726.

Cotton Belt Railroad Office Building, (Historic Buildings of Texarkana, Arkansas, MPS), 312 E. Broad St., Texarkana, 08000727.

East Broad Street Historic District (Historic Buildings of Texarkana, Arkansas, MPS), 100 block E. Broad St., Texarkana, 08000729.

Hopkins Feed and Seed Store (Historic Buildings of Texarkana, Arkansas, MPS), 301 E. 3rd St., Texarkana, 08000728.
Swift Building (Historic Buildings of Texarkana, Arkansas, MPS), 410 E. Broad St., Texarkana, 08000725.

Mississippi County

Hale Avenue Historic District Boundary Increase II (Osceola MRA), 100 and 200 blocks W. Hale Ave.; 100, 200 blocks E. Hale Ave.; 100 block N. Poplar, Osceola, 08000722.

Perry County

Wallace Bridge (Historic Bridges of Arkansas MPS), Perry Co. Rd. 18, Nimrod, 08000724.

COLORADO

Las Animas County

White School (Rural School Buildings in Colorado MPS), Jct. of Co. Rd. 191 and Co. Rd. 30, Kim, 08000740.

INDIANA

Benton County

Benton County Courthouse, 706 E. 5th St., Fowler, 08000741.

Newton County

Newton County Courthouse, One Courthouse Square, Kentland, 08000742.

KENTUCKY

Campbell County

Fort Thomas Commercial District, 1011–1123 Fort Thomas Ave., 9–11 River Rd., 12–28 Midway Ct., Ft. Thomas, 08000751.

LOUISIANA

Jackson Parish

Palace Theatre, 125 Jimmy Davis Blvd., Jonesboro, 08000731.

West Baton Rouge Parish

Antonia (Louisiana's French Creole Architecture MPS), 4626 S. River Rd., Port Allen, 08000743.

MISSOURI

Jackson County

Valentine on Broadway Hotel, 3724 Broadway Blvd., Kansas City, 08000745.

St. Louis Independent City

Oehler Brick Buildings, 3542–48 S. Broadway, St. Louis, 08000749.
Wetzell, Zebediah F. Mary H., House, 3741 Washington Ave., St. Louis, 08000739.

NEW MEXICO

Santa Fe County

El Zaguan, 545 Canyon Rd., Santa Fe, 08000732.

NORTH DAKOTA

Stark County

Dickinson (Carnegie Area) Public Library (Philanthropically Established Libraries in North Dakota MPS), 139 3rd St. W., Dickinson, 08000735.

SOUTH CAROLINA

Anderson County

North Anderson Historic District, E. and W. North Ave. between Boundary St. and Mauldin Dr., including parts of Edgewood Dr. Blair St., Central Ave., Anderson, 08000733.

Greenville County

Allen Temple A.M.E. Church, 109 Green Ave., at jct. with S. Markley St., Greenville, 08000748

Greenwood County

Tabernacle Cemetery, Tabernacle Cemetery Rd., just E. of SC Hwy. 254, Greenwood, 08000736.

Orangeburg County

Trinity Lutheran Church, 390 Hampton St., Elloree, 08000721.

Richland County

Good Samaritan—Waverly Hospital (Segregation in Columbia, South Carolina MPS), 2204 Hampton St., Columbia, 08000738.

SOUTH CAROLINA

York County

Laurelwood Cemetery (Rock Hill MPS), Bordered by Laurel, W. White, Stewart, and W. Main Sts., Rock Hill, 08000746.

TENNESSEE

Giles County

Noblit—Lytle, House, 1311 Sugar Creek Rd., Minor Hill, 08000734.

TEXAS

Lipscomb County

Lipscomb County Courthouse, Courthouse Square, Lipscomb, 08000730.

VERMONT

Lamoille County

Moscow Village Historic District, Moscow Rd., Shaw Hill Rd., Adams Mill Rd., River Rd., Stowe, 08000744.

WISCONSIN

Oneida County

Miller, Marshall D., Boathouse, 7304 Campground Rd., Three Lakes, 08000747.
Trunck, Joseph and Augusta, Boathouse, 1000 Leatzow Rd., Three Lakes, 08000750.
Request for removal has been made for the following resources:

ARIZONA

Maricopa County

Archeological Site AZ U: 10:60 (ASM) (Hohokam Land Use and Settlement along the Northern Queen Creek Delta MPS), Address Restricted, Mesa, 95000752.

[FR Doc. E8–15367 Filed 7–7–08; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–986–987 (Final)]

Ferrovanadium From China and South Africa

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject reviews.

DATES: Effective Date: July 1, 2008.

FOR FURTHER INFORMATION CONTACT: Edward Petronzio (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: On May 22, 2008, the Commission established a schedule for the conduct of the subject reviews (73 FR 31711, June 3, 2008). Subsequently, the parties submitted a request to postpone the hearing date. The Commission, therefore, is revising its schedule to conform with the parties' requests.

The Commission's new schedule for the reviews is as follows: requests to appear at the hearing must be filed with the Secretary to the Commission not later than September 29, 2008; the prehearing conference will be held at the U.S. International Trade Commission Building at 9:30 a.m. on October 2, 2008; the hearing will be held at the U.S. International Trade Commission Building at 9:30 a.m. on October 7, 2008; the deadline for filing posthearing briefs is October 17, 2008; the Commission will make its final release of information on November 5, 2008; and final party comments are due on November 7, 2008.

For further information concerning these reviews see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: These reviews are being conducted under authority of title VII of the

Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

Issued: July 2, 2008.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8–15407 Filed 7–7–08; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1115 (Final)]

Certain Steel Nails From the United Arab Emirates

AGENCY: United States International Trade Commission.

ACTION: Termination of investigation.

SUMMARY: On June 16, 2008, the Department of Commerce published notice in the **Federal Register** of a negative final determination of sales at less than fair value in connection with the subject investigation (73 FR 33985). Accordingly, pursuant to 19 U.S.C. 1673d(b)(1) and section 207.40(a) of the Commission's Rules of Practice and Procedure (19 CFR 207.40(a)), the antidumping investigation concerning certain steel nails from the United Arab Emirates (investigation No. 731–TA–1115 (Final)) is terminated.

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

FOR FURTHER INFORMATION CONTACT: Fred Ruggles (202–205–3187 or *fred.ruggles@usitc.gov*), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

Authority: This investigation is being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 201.10 of the Commission's rules (19 CFR 201.10).

Issued: July 2, 2008.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8–15405 Filed 7–7–08; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–08–017]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: July 9, 2008 at 9:30 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: none.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–1114 (Final) (Certain Steel Nails from China)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before July 21, 2008.)
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: July 1, 2008.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8–15369 Filed 7–7–08; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[OMB Number 1110–0043]

Criminal Justice Information Services Division; National Instant Criminal Background Check System Section; Agency Information Collection Activities: Existing Collection, Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Approval of an existing collection; The Voluntary Appeal File (VAF) Brochure.

The Department of Justice (DOJ), FBI, Criminal Justice Information Services (CJIS) Division's National Instant Criminal Background Check System (NICS) Section will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 73, Number 83, Pages 23273 on April 29, 2008, allowing for a 60-day comment period. The purpose of this notice is to allow for an additional 30 days for public comment until August 7, 2008. This process is conducted in accordance with Title 5, Code of Federal Regulations (CFR), Section 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, *Attention:* Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's/component's estimate of the burden of the proposed collection of the information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information

(1) *Type of Information Collection:* Approval of an existing collection.

(2) *Title of the Forms:* The Voluntary Appeal File (VAF) Brochure.

(3) *Agency Form Number, if any, and the applicable component of the department sponsoring the collection:*

Form Number: 1110–0043.

Sponsor: Criminal Justice Information Services (CJIS) Division of the FBI, Department of Justice (DOJ).

(4) *Affected Public who will be asked or required to respond, as well as a brief abstract:*

Primary: Any individual requesting entry into the FBI's Criminal Justice Information Services (CJIS) Division's National Instant Criminal Background Check System (NICS) Section's Voluntary Appeal File (VAF).

Brief Abstract: Under 28 CFR, Part 25.9(b)(1), (2), (3), the NICS must destroy all identifying information on allowed transactions within 24 hours of the Federal Firearm Licensee (FFL) being notified of the transaction's proceed status. If a potential purchaser is delayed or denied a firearm, then successfully appeals the decision, the NICS Section cannot retain a record of the overturned appeal or the supporting documentation. If the record cannot be updated, the purchaser continues to be delayed or denied, and if that individual appeals the decision, the documentation must be resubmitted for every subsequent purchase. As such, the VAF was mandated to be created and maintained by the NICS Section for the purpose of preventing future lengthy delays or erroneous denials of a firearm transfer. An individual wishing to request entry into the VAF may obtain a VAF brochure from the NICS Section, an FFL, or the NICS Section Web site at the Internet address: *http://www.fbi.gov/programs/nics/index.htm.*

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 12,500 individuals will request entry into the VAF. It takes an average of 5 minutes to read and complete all areas of the application, an estimated 2 hours for the process of fingerprinting including travel, and 25 minutes to mail the form for a total of 2.5 hours estimated burden to the respondent.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The number of persons requesting entry into the VAF is estimated to be 12,500 individuals. The time it takes each individual to complete the process is 2.5 hours. The total public burden hours is 12,500 respondents multiplied by 2.5 hours which equals 31,250 total burden hours.

If additional information is required, contact: Ms. Lynn Bryant, Department Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: July 1, 2008.

Lynn Bryant,

Department Clearance Officer, United States Department of Justice.

[FR Doc. E8–15381 Filed 7–7–08; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1121–NEW]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Emergency Notice of Information Collection Under Review: National Institute of Justice Voluntary Compliance Testing Program.

The Department of Justice, Office of Justice Programs, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with emergency review procedures of the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. If granted, the emergency approval is only valid for 180 days. Comments should be directed to OMB, Office of Information and Regulation Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20503. Comments are encouraged and will be accepted for 60 days until September 8, 2008.

During the first 60 days of this same review period, a regular review of this information collection is also being undertaken. All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Kris Brambila, Attorney-Advisor, Office of General Counsel, Office of Justice Programs, Department of Justice, 810 7th Street, NW., Washington, DC 20531, or e-mail, *Kristopher.A.Brambila@usdoj.gov.*

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—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 agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information

(1) *Type of information collection:* New collection.

(2) *The title of the form/collection:* NIJ Body Armor Compliance Testing Program. This collection consists of five forms: Compliance Testing Program Applicant Agreement; Ballistic Body Armor Model Application and Body Armor Build Sheet; Declaration for Ballistic Body Armor; Compliance Testing Program Conformity Assessment Follow-up Agreement; NIJ-Approved Laboratory Application and Agreement.

(3) *Agency Form Number:* None. *Component Sponsoring Collection:* National Institute of Justice, Office of Justice Programs, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract. Primary:* Body Armor Manufacturers and Testing Laboratories. Other: None. The purpose of the NIJ Voluntary Compliance Testing Program (CTP) is to ensure to the degree possible that body armor used for law enforcement and corrections applications is safe, reliable, and meets performance requirements over the declared performance period. Body armor models that are successfully tested by the CTP and listed on the NIJ Compliant Products List are eligible for purchase with grant funding through the Ballistic Vest Partnership.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* Total of 60 respondents estimated.

CTP Applicant Agreement: Estimated 50 respondents; 1 hour each;

Ballistic Body Armor Model Application and Body Armor Build Sheet: Estimated 50 respondents (estimated 250 responses) at 30 minutes each;

Declaration for Ballistic Body Armor: Estimated 50 respondents (estimated 250 responses) at 15 minutes each;

CTP Conformity Assessment Follow-up Agreement: Estimated 50 respondents (estimated 250 responses) at 15 minutes each;

NIJ-Approved Laboratory Application and Agreement: Estimated 8 to 10 respondents at 1 hour each.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated total public burden associated with this information is 310 hours in the first year and 100 hours each subsequent year.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: July 2, 2008.

Lynn Bryant,

Department Clearance Officer, Department of Justice.

[FR Doc. E8–15404 Filed 7–7–08; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Parole Commission

Record of Vote of Meeting Closure (Pub. L. 94–409) (5 U.S.C. 552b)

I, Edward F. Reilly, Jr., Chairman of the United States Parole Commission, was present at a meeting of said Commission, which started at approximately 12:30 p.m., on Tuesday, May 13, 2008, at the U.S. Parole Commission, 5550 Friendship Boulevard, 4th Floor, Chevy Chase, Maryland 20815. The purpose of the meeting was to decide four petitions for reconsideration pursuant to 28 CFR 2.27. Four Commissioners were present, constituting a quorum when the vote to close the meeting was submitted.

Public announcement further describing the subject matter of the meeting and certifications of General Counsel that this meeting may be closed by vote of the Commissioners present were submitted to the Commissioners prior to the conduct of any other business. Upon motion duly made, seconded, and carried, the following Commissioners voted that the meeting be closed: Edward F. Reilly, Jr., Cranston J. Mitchell, Isaac Fulwood, Jr., and Patricia Cushwa.

In witness whereof, I make this official record of the vote taken to close this meeting and authorize this record to be made available to the public.

Dated: June 25, 2008.

Cranston J. Mitchell,

Vice Chairman, U.S. Parole Commission.

[FR Doc. E8–15305 Filed 7–7–08; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Office of Job Corps; Advisory Committee on Job Corps; Meeting

AGENCY: Office of Job Corps.

ACTION: Notice of Advisory Committee meeting.

SUMMARY: On August 22, 2006, the Advisory Committee on Job Corps (ACJC) was established in accordance with the provisions of the Workforce Investment Act and the Federal Advisory Committee Act. The Committee was established to advance Job Corps' new vision for student achievement aimed at 21st century high-growth employment. This Committee will also evaluate Job Corps program characteristics, including its purpose, goals, and effectiveness, efficiency, and performance measures in order to address the critical issues facing the provision of job training and education to the youth population that it serves. The Committee may provide other advice and recommendations with regard to identifying and overcoming problems, planning program or center development or strengthening relations between Job Corps and agencies, institutions, or groups engaged in related activities.

DATES: The meeting will be held on July 22–23, 2008 from 8 a.m. to 12 noon on July 22 and from 8 a.m. to 10 a.m. on July 23. The Committee will be visiting three Job Corps Centers—Treasure Island, San Jose and Sacramento.

ADDRESSES: The Advisory Committee meeting will be held at the Westin St. Francis (San Francisco), 335 Powell Street, San Francisco, California 94102. Telephone: (866) 497–2788.

FOR FURTHER INFORMATION CONTACT: Crystal Woodard, Office of Job Corps, 202–693–3000 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: On August 22, 2006 the Advisory Committee on Job Corps (71 FR 48949) was established in accordance with the provisions of the Workforce Investment Act, and the Federal Advisory Committee Act. The Committee was established to advance Job Corps' new vision for student achievement aimed at 21st century high-growth employment. This Committee will also evaluate Job Corps program characteristics, including its purpose, goals, and effectiveness, efficiency, and performance measures in order to address the critical issues facing the provision of job training and education to the youth population that it serves. The Committee may provide other advice and recommendations with regard to identifying and overcoming problems, planning program or center development or strengthening relations between Job Corps and agencies, institutions, or groups engaged in related activities.

Agenda: The agenda for the meeting will be the continuation of report outs from the Committee's two subcommittees—subcommittee on facilities and subcommittee on safety and security.

Public Participation: The meeting will be open to the public. Seating will be available to the public on a first-come first-served basis. Seats will be reserved for the media. Individuals with disabilities should contact the Job Corps official listed above, if special accommodations are needed.

Signed at Washington, DC, this 18th day of June 2008.

Esther R. Johnson,

National Director, Office of Job Corps.

[FR Doc. E8–15332 Filed 7–7–08; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Office of the Secretary

Research on Forced Labor in the Production of Goods in Selected Countries

AGENCY: Bureau of International Labor Affairs, U.S. Department of Labor.

ACTION: New. Notice of Availability of Funds and Solicitation for Cooperative Agreement Applications (SGA). The full announcement is posted on *http://www.grants.gov* and DOL/ILAB's Web site at *http://www.dol.gov/ILAB/grants/main.htm.*

Funding Opportunity Number: SGA 08–07

Catalog of Federal Domestic Assistance (CFDA) Number: Not applicable.

SUMMARY: The U.S. Department of Labor, Bureau of International Labor Affairs (ILAB), will award up to USD 1.25 million over three years through a cooperative agreement to a qualified organization and/or Association to carry out research in eight (8) countries on forced labor in the production of goods, and to develop strategies to assist governments, industries, and/or third parties in taking action to address these

problems. Four (4) countries are required for research, and applicants must choose four (4) additional countries. The solicitation provides a list of eleven (11) countries from which these four (4) additional countries should be chosen, but applicants may propose four (4) alternate countries and provide justifications for these choices. Projects funded under SGA 08–07 will involve gathering and analyzing data to answer the research questions outlined in the solicitation. The research will aim to complement and expand upon existing research on the use of forced labor in the production of goods.

Application and Submission Information: The full-text version of SGA 08–07 is available on *http://www.grants.gov* and USDOL/ILAB's Web site at *http://www.dol.gov/ILAB/grants/main.htm.* All applications for funding under SGA 08–07 must be submitted electronically to USDOL via *http://www.grants.gov.* Any application sent by mail or other delivery services, e-mail, telegram, or facsimile (FAX) will not be accepted.

Key Dates: The deadline for submission of applications is August 8, 2008. All technical questions regarding SGA 08–07 must be sent by July 18, 2008 in order to receive a response. USDOL will publish its responses to these technical questions on SGA 08–07 by July 28, 2008. Any questions regarding the electronic assembly of application packages must be sent at least one week prior to the application deadline. USDOL will make all cooperative agreement awards on or before September 30, 2008.

Agency Contacts: All technical questions regarding SGA 08–07 should be sent to Ms. Lisa Harvey, Grant Officer, U.S. Department of Labor's Office of Procurement Services, via e-mail (e-mail address: harvey.lisa@dol.gov; telephone: (202) 693–4592—this is not a toll-free-number).

Background Information: ILAB conducts research and commissions studies to inform and formulate international economic, trade and labor policies in collaboration with other U.S. government agencies, and provides technical assistance to countries abroad in support of foreign labor policy objectives. OCFT, formerly the International Child Labor Program (ICLP), was created at the request of Congress in 1993 to specifically research and report on child labor around the world. More recently Congress, through the Trafficking Victims Protection Reauthorization Act (TVPRA) of 2005, directed ILAB to include, among its responsibilities, monitoring and combating forced labor. 22 U.S.C. 7112(b). Today, OCFT develops policy, conducts research, and implements technical cooperation projects to eradicate exploitive child labor, trafficking in persons, and forced labor worldwide.

Since 1994, ILAB has published over 20 congressionally mandated reports on international child labor. In addition to its own research, USDOL has funded projects aimed at building the knowledge base on child labor, forced labor and human trafficking world wide for the purposes of improving program planning, policy design and impact measurement. Research projects have included the collection of child labor data through national surveys, rapid assessments, baseline studies; special and thematic studies; comprehensive literature reviews on forced labor, child labor and human trafficking; and the development of creative and innovative methodologies to measure child labor, forced and bonded labor, and human trafficking.

Signed at Washington, DC, this 1st day of July 2008.

Lisa Harvey,

Grant Officer.

[FR Doc. E8–15398 Filed 7–7–08; 8:45 am]

BILLING CODE 4510–28–P

DEPARTMENT OF LABOR

Employment and Training Administration

[A–W–63,206]

Springs Global, US, Inc., Springs Direct Tunnel Road Store Division, Asheville, NC; Notice of Negative Determination Regarding Application for Reconsideration

By application dated June 5, 2008, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on April 28, 2008 and published in the **Federal Register** on May 15, 2008 (73 FR 28167).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The negative TAA determination issued by the Department for workers of Springs Global, US, Inc., Springs Direct Tunnel Road Store Division, Asheville, North Carolina was based on the finding that the worker group does not produce an article within the meaning of Section 222 of the Trade Act of 1974.

The petitioner states that the workers of the subject firm ''answered the needs'' in ''providing means for the buyer to return damaged goods, overstocks, slow sellers and items they wish to discontinue.'' The petitioner further states that the subject firm ''provided a profitable avenue'' and supported sales and orders for the production division and that the subject firm is ''specifically designed for direct support of production.'' The petitioner alleges that because other facilities of Springs Global have been certified eligible for TAA, workers of the subject firm who are engaged in retail should be certified eligible for TAA.

The investigation revealed that workers of Springs Global, US, Inc., Springs Direct Tunnel Road Store Division, Asheville, North Carolina are engaged in activities at retail outlet store that sold close-out home furnishings merchandise. These functions, as described above, are not considered production of an article within the meaning of Section 222 of the Trade Act.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed in Washington, DC, this 24th day of June 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–15341 Filed 7–3–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,180]

Welex, Inc., Blue Bell, Pennsylvania; Notice of Revised Determination on Remand

On March 28, 2008, the United States Court of International Trade (USCIT) granted the Department of Labor's motion for voluntary remand for further investigation in *Former Employees of Welex, Inc.* v. *United States*, Court No. 07–00314.

The worker-filed petition for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA), dated March 26, 2007, stated that workers at Welex, Inc., Blue Bell, Pennsylvania (the subject firm) produced ''extruders and sheet takeoffs (plastic production)'' and alleged that foreign competition contributed to the closure of the subject firm on January 31, 2007. Documentation provided by the petitioners stated that ''Welex equipment makes PET, polypropylene and polystyrene sheet for packaging, such as fast food drink cups, lids for disposable coffee cups and clear clamshell boxes.''

On April 18, 2007, the Department of Labor (Department) issued a negative determination regarding eligibility to apply for TAA/ATAA for workers and former workers of the subject firm.

The initial investigation revealed that the subject workers produced plastic extrusion equipment; the subject firm did not import plastic extrusion equipment or shift production of plastic extrusion equipment to any foreign country; subject firm sales and production of plastic extrusion equipment increased in 2006 compared with 2005; and the dominant cause of separations at the subject firm was the complete transfer of plastic extrusion equipment production to a new domestic manufacturing facility. The Department's initial negative determination was based on the findings that increased imports did not contribute importantly to subject firm sales and/or production declines and to workers' separations.

The Department's Notice of negative determination was published in the **Federal Register** on May 9, 2007 (72 FR 26425).

In the request for administrative reconsideration, dated May 18, 2007, three workers alleged that increased imports contributed importantly to subject firm sales and production declines, and to the subject workers' separations.

By letter dated July 3, 2007, the Department informed the workers that the request for reconsideration was dismissed on the basis that insufficient evidence was provided to warrant administrative reconsideration. On July 9, 2007, the Department issued a Notice of Dismissal of Application for Reconsideration. The Department's Notice of dismissal was published in the **Federal Register** on July 17, 2007 (72 FR 39080).

In the complaint to the USCIT, dated August 16, 2007, the Plaintiff alleged that the subject firm relocated to ''the less expensive south'' in order to ''compete with the Chinese.'' The Plaintiff also alleged that ''increased imports contributed importantly to an actual decline in sales or production and to our permanent layoff.''

To be certified for TAA based on increased imports, the petitioning workers must meet the group eligibility criteria:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated; and

B. the sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision.

On remand, the Department sent supplemental information requests for additional information and clarification regarding the subject firm's sales and production process, conducted several lengthy discussions with the subject firm, and contacted a trade association to gain insight into this industry. As a result of these efforts, the Department was able to obtain crucial information which was not previously available.

TAA Criterion: Worker Separations at the Subject Firm

During the remand investigation, the Department confirmed that the subject firm ceased operations in January 2007 and permanently closed. Therefore, the Department determines that a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated.

TAA Criterion: Absolute Sales and/or Production Declines at the Subject Firm or Appropriate Subdivision

During the remand investigation, the Department received new information which revealed that, although sales and production at the subject firm increased in calendar year 2006 from calendar year 2005 levels, sales orders decreased in the latter part of 2006 and into the earlier part of 2007. Thus, the Department determines that subject firm sales and production declined absolutely.

TAA Criterion: Increased Imports Contributed Importantly to Subject Firm Sales/Production Declines and Workers' Separations

29 CFR section 90.2 states that increased imports ''means that imports have increased either absolutely or relative to domestic production compared to a representative base period. The representative base period shall be one year consisting of the four quarters immediately preceding the date which is twelve months prior to the date of the petition.'' 29 CFR 90.16(b)(3) states that ''contributed importantly means a cause which is important but not necessarily more important than any other cause.''

The TAA/ATAA petition date is March 26, 2007. Therefore, the Department must determine whether imports of plastic extrusion equipment (or articles like or directly competitive with the plastic extrusion equipment produced at the subject firm) have increased during March 26, 2006 through March 25, 2007 (relevant period) compared to the base period (the four quarters immediately prior to March 26, 2006). If the Department finds increased imports, the Department must then determine whether the increased imports contributed importantly to the subject firm's sale and/or production declines and workers' separations.

Increased Imports of Plastic Extrusion Equipment

In previous submissions, the subject firm indicated that it did not import plastic extrusion equipment or any articles like or directly competitive with them and that customer purchases are intermittent.

On remand, the subject firm confirmed that, because plastic extrusion equipment is not purchased regularly by customers, there are no major customers that constitute a majority of the subject firm's sales/production declines. The Department was also informed by the subject firm that they do not bid on production

projects but fulfill sales orders (customers contact the subject firm, the subject firm quotes a price, and if an order is placed, the subject firm builds the equipment per order specifications).

Based on the above facts, the Department determines that a customer survey would be unlikely to produce any meaningful results. Further, the Department determined that, since the subject firm is a major domestic producer and accounts for a significant portion of the domestic plastic extrusion equipment market, aggregate U.S. import data would better reflect the impact of increased U.S. imports on the subject firm.

During the remand investigation, the Department conducted research on U.S. shipments and U.S. imports of plastic extrusion equipment during 2005, 2006, and January through April 2007. The Department's research revealed a significant increase in imports of plastic extrusion equipment (and articles like or directly competitive with plastic extrusion equipment produced at the subject firm) during January through April 2007 as compared to estimated imports during January through April 2006.

Increased Imports Contributed Importantly to Subject Firm Sales and/or Production Declines and Worker Separations

As previously stated, subject firm sales orders declined in the latter part of 2006 into early 2007 and the subject firm sales constitute a meaningful portion of the U.S. plastic extrusion equipment market. Further, the period of increased imports corresponds with the period during which subject firm sales orders declined. Therefore, increased U.S. imports would likely have had a significant impact on the subject firm.

In accordance with Section 246 the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department herein presents the results of its investigation regarding certification of eligibility to apply for ATAA. The Department has determined in this case that the group eligibility requirements of Section 246 have been met.

A significant number of workers at the firm are age 50 or over and possess skills that are not easily transferable. Competitive conditions within the industry are adverse.

Conclusion

After careful review of the facts developed in the remand investigation, I determine that there was a total separation of a significant number or proportion of workers at the subject firm, that there were subject firm sales and production declines, and that increased imports of articles like or directly competitive with plastic extrusion equipment produced at the subject firm contributed importantly to the subject firm declines and the workers' separations.

In accordance with the provisions of the Act, I make the following certification:

''All workers of Welex, Inc., Blue Bell, Pennsylvania, who became totally or partially separated from employment on or after March 26, 2006, through two years from the issuance of this revised determination, are eligible to apply for Trade Adjustment Assistance under Section 223 of the Trade Act of 1974, and are eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.''

Signed at Washington, DC this 26th day of June 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–15338 Filed 7–7–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than July 18, 2008.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than July 18, 2008.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 25th day of June 2008.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

APPENDIX

[TAA petitions instituted between 6/16/08 and 6/20/08]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
63541	Avery Dennison (Comp)	Fontana, CA	06/16/08	06/13/08
63542	Home Depot (State)	Opelousas, LA	06/16/08	06/13/08
63543	Pliant Plastic Company (UE)	South Deerfield, MA	06/17/08	06/12/08
63544	ITW Alma (Comp)	Kennesaw, GA	06/17/08	06/16/08
63545	T. W. Lamination (Woodbridge) (Comp)	Del Rio, TX	06/17/08	06/11/08
63546	BBDO Detroit (State)	Troy, MI	06/17/08	06/12/08
63547	Lapeer Metal Stamping (Wkrs)	Lapeer, MI	06/17/08	06/16/08

APPENDIX—Continued

[TAA petitions instituted between 6/16/08 and 6/20/08]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
63548	Colville Indian Plywood and Veneer Co. of Omak (Comp).	Omak, WA	06/17/08	06/04/08
63549	CEVA Logistics—Contract 10164 (Comp)	Miamisburg, OH	06/17/08	06/10/08
63550	Pazvenu Apparel, Inc. (Wkrs)	New York, NY	06/17/08	06/01/08
63551	Culp, Inc. Culp Weaving Plant (Comp)	Graham, NC	06/17/08	06/13/08
63552	Maxim Integrated Products—San Jose (Comp).	San Jose, CA	06/17/08	06/13/08
63553	Maxim Integrated Products—Sunnyvale (Comp).	Sunnyvale, CA	06/17/08	06/13/08
63554	Cranford Wood Carving/McCrorie Group, LLC (Comp).	Hickory, NC	06/18/08	06/17/08
63555	Hurd Window and Door (Wkrs)	Medford, WI	06/18/08	06/17/08
63556	Intel Corporation, California Corporate Services Group (Comp).	Santa Clara, CA	06/18/08	06/16/08
63557	Royal Home Fashions (Comp)	Henderson, NC	06/18/08	06/17/08
63558	Park Shirt Company (AFLCIO)	Jamestown, TN	06/18/08	06/17/08
63559	Shieldalloy Metallurgical Corporation (Wkrs)	Newfield, NJ	06/18/08	05/20/08
63560	Artisans, Inc. (Comp)	Glen Flora, WI	06/18/08	06/17/08
63561	United Airlines (Wkrs)	El Segundo, CA	06/18/08	06/07/08
63562	Winchester Electronics—Rock Hill (Comp)	Rock Hill, SC	06/18/08	06/16/08
63563	Winchester Electronics—Franklin (Comp)	Franklin, MA	06/18/08	06/16/08
63564	Sensormatic Electronic Corporation (State)	San Antono, PR	06/18/08	06/17/08
63565	Four Season (Comp)	Grapevine, TX	06/19/08	06/18/08
63566	Plastech (Comp)	Moraine, OH	06/19/08	06/18/08
63567	Huber Engineered Woods, LLC (Wkrs)	Broken Bow, OK	06/19/08	05/01/08
63568	Jockey International, Inc. (Comp)	Mocksville, NC	06/19/08	06/18/08
63569	Leggett and Platt (Wkrs)	Tupelo, MS	06/19/08	06/18/08
63570	Blue Angel's Fashion (Wkrs)	San Francisco, CA	06/20/08	06/19/08
63571	West Point Home (Comp)	New York, NY	06/20/08	06/19/08
63572	Narraganett Jewerly, Inc. d/b/a C & J Jewelry Co. (Comp).	Providence, RI	06/20/08	06/19/08
63573	Avon Products, Inc. (Wkrs)	Suwanee, GA	06/20/08	06/19/08
63574	Albany International Research Company (Rep).	Mansfield, MA	06/20/08	06/19/08
63575	Philips Consumer Lifestyles (Comp)	Ledgewood, NJ	06/20/08	06/18/08
63576	Matador Tool and Die, Inc. (Comp)	Grand Rapids, MI	06/20/08	06/19/08

[FR Doc. E8–15337 Filed 7–7–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,424]

Ferguson Aluminum, Olmsted, IL; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 22, 2008 in response to a worker petition filed by a company official on behalf of workers at Ferguson Aluminum, Olmsted, Illinois.

The petitioner has requested that petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 27th day of June 2008.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–15342 Filed 7–7–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,011]

B. Walter and Company, Wabash, IN; Notice of Revised Determination on Reconsideration

By application dated May 26, 2008, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm.

The initial investigation initiated on March 17, 2008, resulted in a negative determination issued on May 15, 2008, was based on the finding that imports of metal stampings did not contribute importantly to worker separations at the subject firm and no shift of production to a foreign source occurred. The denial notice was published in the **Federal Register** on May 29, 2008 (73 FR 30978).

In the request for reconsideration, the petitioner provided new information regarding a customer of the subject firm, which was recently certified eligible for TAA.

Upon further investigation it was determined that B. Walter and Company, Wabash, Indiana supplied metal stampings that were used in the production of wooden furniture, and a loss of business with domestic manufacturers (whose workers were certified eligible to apply for adjustment assistance) contributed importantly to the workers separation or threat of separation. The parts supplied were related to the articles that were the basis of certification.

In accordance with Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as

amended, the Department herein presents the results of its investigation regarding certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers.

In order for the Department to issue a certification of eligibility to apply for ATAA, the group eligibility requirements of Section 246 of the Trade Act, as amended, must be met. The Department has determined in this case that the requirements of Section 246 have been met.

A significant number of workers at the firm are age 50 or over and possess skills that are not easily transferable. Competitive conditions within the industry are adverse.

Conclusion

After careful review of the additional facts obtained on reconsideration, I determine that workers of B. Walter and Company, Wabash, Indiana qualify as adversely affected secondary workers under Section 222 of the Trade Act of 1974, as amended. In accordance with the provisions of the Act, I make the following certification:

All workers of B. Walter and Company, Wabash, Indiana, who became totally or partially separated from employment on or after March 10, 2007, through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed in Washington, DC, this 24th day of June 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–15340 Filed 7–3–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,508]

Bedford Logistics, Inc., Bedford, IN; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on June 9, 2008 in response to a worker petition filed on behalf of workers of Bedford Logistics, Inc., Bedford, Indiana.

The petitioning group of workers is covered by an active certification (TA–W–62,626) which expires on February 27, 2010. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 24th day of June 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–15344 Filed 7–7–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,601]

General Ribbon Corporation, Chatsworth, CA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on June 25, 2008 in response to a worker petition filed on behalf of workers of General Ribbon Corporation, Chatsworth, California.

The petitioning group of workers is covered by an active certification (TA–W–63,601) which expires on November 30, 2008. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 27th day of June 2008.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–15336 Filed 7–7–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,534]

Novtex Division of Trimtex Co., Inc., Adams, MA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on June 3, 2008, in response to a worker petition filed by a company official on behalf of workers of Novtex Division of Trimtex Co., Inc., Adams, Massachusetts.

The petitioning group of workers is covered by an active certification (TA–W–63,085A) which expires on April 24, 2010. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 26th day of June 2008.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–15345 Filed 7–7–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,566]

Plastech, Moraine, OH; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on June 19, 2008, in response to a worker petition filed by a company official on behalf of workers at Plastech, Moraine, Ohio.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 26th day of June 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–15346 Filed 7–7–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,485]

Trans-Ocean Products, Inc., Salem, OR; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on June 5, 2008, in response to a worker petition filed by a company official and a State agency representative on behalf of workers at Trans-Ocean Products, Inc., Salem, Oregon.

The petitioners have requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 27th day of June 2008.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–15343 Filed 7–7–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2008–0017]

Electrical Standards for Construction and General Industry; Extension of the Office of Management and Budget's (OMB) Approval of the Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comment.

SUMMARY: OSHA solicits comments concerning its request for an extension of the information collection requirements contained in the Electrical Standards for Construction (29 CFR part 1926, subpart K) and for General Industry (29 CFR part 1910, subpart S). The Standards address safety procedures for installation and maintenance of electric utilization equipment that prevent death and serious injuries among construction and general industry employees in the workplace caused by electrical hazards.

DATES: Comments must be submitted (postmarked, sent, or received) by September 8, 2008.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit three copies of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2008–0017, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and OSHA docket number for the ICR (OSHA–2008–0017). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at http://www.regulations.gov. For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.*, copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

The information collection requirements specified by the Electrical Standards for Construction and General Industry alert employees to the presence and types of electrical hazards in the workplace, thereby preventing serious injury and death by electrocution. The information collection requirements in the standards involve the following: The employer using electrical equipment that is marked with the manufacturer's name, trademark, or other descriptive markings that identify the producer of the equipment, and marking the equipment with the voltage, current, wattage, or other ratings necessary; requiring each disconnecting means for motors and appliances to be marked legibly to indicate its purpose, unless located and arranged so the purpose is evident; requiring the entrances to rooms and other guarded locations containing exposed live parts to be marked with conspicuous warning signs forbidding unqualified persons from entering; and, for construction employers only, establishing and implementing the assured equipment grounding conductor program instead of using ground-fault circuit interrupters.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and cost) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is proposing to combine the information collection requirements contained in the Design Safety Systems for Electrical Systems (29 CFR 1910.302–.308 and 1910.399 (OMB Control No. 1218–0256) with the information collection requirements contained in the Electrical Standards for Construction (29 CFR part 1926, subpart K) and for General Industry (29 CFR part 1910, subpart S) (OMB Control No. 1218–0130). In doing so, the Agency is proposing to adjust the total burden hours of these subparts from 92,644 hours to 151,172 hours; a total increase of 58,528 hours. The burden hours have increased primarily due to an increase in the total number of jobsites for construction from 42,750 to 45,000. The

Agency will summarize the comments submitted in response to this notice, and will include this summary in the request to OMB to extend the approval of the information collection requirements contained in the standards.

Type of Review: Extension of a currently approved collection.

Title: Electrical Standards for Construction (29 CFR part 1926, subpart K) and General Industry (29 CFR part 1910, subpart S).

OMB Number: 1218–0130.

Affected Public: Business or other for-profit; not-for-profit institutions; Federal Government; State, local, or tribal governments.

Number of Respondents: 500,000.

Frequency of Response: Occasionally.

Total Responses: 2,331,135.

Average Time per Response: Varies from three minutes (.08 hour) to post and construct each sign to four hours to document a hazardous classified location by a certified electrical engineer.

Estimated Total Burden Hours: 151,172.

Estimated Cost (Operation and Maintenance): $7,500.

IV. Public Participation—Submission of Comments on this Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal; (2) by facsimile (FAX); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2008–0017). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov*. Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (e.g., copyrighted material) is not publicly available to read or download through this website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available through the website, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

Edwin G. Foulke, Jr., Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 5–2007 (72 FR 31159).

Signed at Washington, DC, on July 1, 2008.

Edwin G. Foulke, Jr.,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. E8–15392 Filed 7–7–08; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2008–0021]

Standard on Vinyl Chloride; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comment.

SUMMARY: OSHA solicits public comment concerning its proposal to extend OMB approval of the information collection requirements specified in the Standard on Vinyl Chloride (29 CFR 1910.1017).

DATES: Comments must be submitted (postmarked, sent, or received) by September 8, 2008.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit three copies of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2008–0021, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and OSHA docket number for the ICR (OSHA–2008–0021). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov*. For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden,

conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

The Standard specifies a number of paperwork requirements. The following is a brief description of the collection of information requirements contained in the Vinyl Chloride (VC) Standard.

(A) Exposure Monitoring (§ 1910.1017(d))

Paragraph 1910.1017(d)(2) requires employers to conduct exposure monitoring at least quarterly if the results show that employee exposures are above the permissible exposure limit (PEL), while those exposed at or above the Action Level (AL) must be monitored no less than semiannually. Paragraph (d)(3) requires that employers perform additional monitoring whenever there has been a change in VC production, process or control that may result in an increase in the release of VC.

(B) Written Compliance Plan (§ 1910.1017(f)(2) and (f)(3))

Paragraph (f)(2) requires employers whose engineering and work practice controls cannot sufficiently reduce employee VC exposures to a level at or below the PEL to develop and implement a plan for doing so. Paragraph (f)(3) requires employers to develop this written plan and provide it upon request to OSHA for examination and copying. These plans must be updated annually.

(C) Medical Surveillance (§ 1910.1017(k))

Paragraph (k) requires employers to develop a medical surveillance program for employees exposed to VC in excess of the action level. Examinations must be provided in accordance with this paragraph at least annually. Employers must also obtain, and provide to each employee, a copy of a physician's statement regarding the employee's suitability for continued exposure to VC, including use of protective equipment and respirators, if appropriate.

(D) Recordkeeping (§ 1910.1017(m))

Employers must maintain employee exposure and medical records. The VC standard requires that employers make available monitoring, measuring, and medical records at the request of the Assistant Secretary (usually an OSHA compliance officer).

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend its approval of the collection of information requirements contained in the Standard on Vinyl Chloride (29 CFR 1910.1017). The Agency is requesting to reduce its current burden hour estimate associated with the Standard from 1,758 hours to 712 hours for a total reduction of 1,046 hours. This decrease (based on new data obtained by the Agency) is a result of reducing the number of VC and PVC establishments from 77 to 32 establishments. The Agency will include this summary in its request to OMB to extend the approval of these collection of information requirements.

Type of Review: Extension of a currently approved collection.

Title: Vinyl Chloride (29 CFR 1910.1017).

OMB Number: 1218–0010.

Affected Public: Business or other for-profits.

Number of Respondents: 32.

Total Responses: 1,108.

Frequency: On occasion.

Estimated Time per Response: Varies from 5 minutes (.08 hour) for employers to maintain records to 12 hours for employers to update their compliance plans.

Total Burden Hours: 1,758.

Estimated Cost (Operation and Maintenance): $48,928.

IV. Public Participation—Submission of Comments on this Notice and Internet Access to Comments and Submissions

You may submit comments and supporting materials in response to this notice by (1) Hard copy, (2) FAX transmission (facsimile), or (3) electronically through the OSHA Webpage. Because of security-related problems, there may be a significant delay in the receipt of comments by regular mail. Please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for information about security procedures concerning the delivery of submissions by express delivery, hand delivery and courier service.

All comments, submissions and background documents are available for inspection and copying at the OSHA Docket Office at the above address. Comments and submissions posted on OSHA's Webpage are available at *http://www.OSHA.gov*. Contact the OSHA Docket Office for information about materials not available through the OSHA Webpage and for assistance using the Webpage to locate docket submissions.

Electronic copies of this **Federal Register** notice as well as other relevant documents are available on OSHA's Webpage. Since all submissions become public, private information such as social security numbers should not be submitted.

V. Authority and Signature

Edwin G. Foulke, Jr., Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 5–2007 (72 FR 31159).

Signed at Washington, DC, on July 1, 2008.

Edwin G. Foulke, Jr.,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. E8–15393 Filed 7–7–08; 8:45 am]

BILLING CODE 4510–26–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** Notice with a 60-day comment period on this information collection on March 24, 2008.

1. *Type of submission, new, revision, or extension:* Extension.
2. *The title of the information collection:* NRC Form 450, ''General Assignment.''
3. *Current OMB approval number:* 3150–0114.
4. *The form number if applicable:* NRC Form 450.
5. *How often the collection is required:* Once during the closeout process.
6. *Who will be required or asked to report:* Contractors, Grantees, and Cooperators.
7. *An estimate of the number of annual responses:* 100.
8. *The estimated number of annual respondents:* 100.
9. *An estimate of the total number of hours needed annually to complete the requirement or request:* 200.
10. *Abstract:* During the contract closeout process, the NRC requires the contractor to execute a NRC Form 450, General Assignment. Completion of the form grants the government all rights, titles, and interest to refunds arising out of the contractor performance.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by August 7, 2008. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Nathan J. Frey, Office of Information and Regulatory Affairs (3150–0114), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be e-mailed to *Nathan_J._Frey@omb.eop.gov* or submitted by telephone at (202) 395–7345.

The NRC Clearance Officer is Margaret A. Janney, (301) 415–7245.

Dated at Rockville, Maryland, this 27th day of June 2008.

For the Nuclear Regulatory Commission.

Gregory Trussell,

Acting NRC Clearance Officer, Office of Information Services.

[FR Doc. E8–15410 Filed 7–7–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice; Applications and Amendments to Facility Operating Licenses Involving Proposed No Significant Hazards Considerations and Containing Sensitive Unclassified Non-Safeguards Information or Safeguards Information and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information or Safeguards Information

I. Background

Pursuant to section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This notice includes notices of amendments containing sensitive unclassified non-safeguards information (SUNSI) or safeguards information (SGI).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rulemaking, Directives and Editing Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D44, Two

White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, person(s) may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request via electronic submission through the NRC E-Filing system for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, or at *http://www.nrc.gov/reading-rm/doc-collections/cfr/part002/part002–0309.html.* Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner/requestor intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for hearing or a petition for leave to intervene must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in August 28, 2007 (72 FR 49139). The E-Filing process requires participants to submit and serve documents over the internet or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the petitioner/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 proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner/requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each petitioner/requestor will need to download the Workplace Forms Viewer(tm) to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer(tm) is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html.* Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.*

Once a petitioner/requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for hearing or petition for leave to intervene. 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 documents through EIE. To be timely, an electronic filing 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 documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can 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 a 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.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii). To be timely, filings must be submitted no later than 11:59 p.m. Eastern Time on the due date.

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 submission.

For further details with respect to this amendment action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr.resource@nrc.gov.*

Dominion Nuclear Connecticut Inc., et al., Docket No. 50–423, Millstone Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: May 8, 2008.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The proposed changes would allow for interim alternate steam generator tube repair criterion, as specified in the Millstone Power Station, Unit 3 (MPS3) technical specifications. The interim alternate repair criterion would be for the upcoming refueling outage and the subsequent operating cycle. The proposed request would also add three reporting criteria to the MPS3 technical specifications for steam generator tube inspections.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed [amendment] involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No

Of the various accidents previously evaluated, the proposed changes affect only the steam generator tube rupture (SGTR) event evaluation and the postulated steam line break (SLB), locked rotor, and control rod ejection accident evaluations. Loss-of-coolant accident (LOCA) conditions cause a compressive axial load to act on the tube. Therefore, since the LOCA tends to force the tube into the tubesheet rather than pull it out, it is not a factor in this amendment request. Another faulted load consideration is a safe shutdown earthquake (SSE); however, the seismic analysis of Model F steam generators has shown that axial loading of the tubes is negligible during an SSE.

At normal operating pressures, leakage from PWSCC [primary water stress-corrosion cracking] below 17 inches from the TTS [top of tubesheet] is limited by both the tube-to-tubesheet crevice and the limited crack opening permitted by the tubesheet constraint. Consequently, negligible normal operating leakage is expected from cracks within the tubesheet region.

For the SGTR event, the required structural margins of the steam generator tubes is [are] maintained by limiting the allowable ligament size for a circumferential crack to remain in service to 203 degrees below 17 inches from the TTS for the subsequent operating cycle. Tube rupture is precluded for cracks in the hydraulic expansion region due to the constraint provided by the tubesheet. The potential for tube pullout is mitigated by limiting the allowable crack size to 203 degrees for the subsequent operating cycle. These allowable crack sizes take into account eddy current uncertainty and crack growth rate. It has been shown that a circumferential crack with an azimuthal extent of 203 degrees for the 18-month SG tubing eddy current inspection interval meets the performance criteria of NEI 97–06, Rev. 2, ''Steam Generator Program Guidelines'' and Draft Regulatory Guide (RG) 1.121, ''Bases for Plugging Degraded PWR [pressurized-water reactor] Steam Generator Tubes.'' Therefore, the margin against tube burst/pullout is maintained during normal and postulated accident conditions and the proposed change does not result in a significant increase in the probability or consequence of a SGTR.

The probability of a SLB is unaffected by the potential failure of a SG tube as the failure of a tube is not an initiator for a SLB event. SLB leakage is limited by leakage flow restrictions resulting from the leakage path above potential cracks through the tube-to-tubesheet crevice. The leak rate during postulated accident conditions (including locked rotor and control rod ejection) has been shown to remain within the accident analysis assumptions for all axial or circumferentially oriented cracks occurring 17 inches below the top of the tubesheet. Since normal operating leakage is limited to 150 gpd (approximately 0.10 gpm), the attendant accident condition leak rate, assuming all leakage to be from indications below 17 inches from the top of the tubesheet, would be bounded by 0.35 gpm. This value is within the accident analysis assumptions for the limiting design basis accident for MPS3, which is the postulated SLB event.

Based on the above, the performance criteria of NEI–97–06, Rev. 2 and Draft Regulatory Guide (RG) 1.121 continue to be

met and the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed [amendment] create the possibility of a new or different [kind of] accident from any accident previously evaluated?

Response: No

The proposed change does not introduce any changes or mechanisms that create the possibility of a new or different kind of accident. Tube bundle integrity is expected to be maintained for all plant conditions upon implementation of the interim alternate repair criteria. The proposed change does not introduce any new equipment or any change to existing equipment. No new effects on existing equipment are created nor are any new malfunctions introduced.

Therefore, based on the above evaluation, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed [amendment] involve a significant reduction in a margin of safety?

Response: No.

The proposed change maintains the required structural margins of the steam generator tubes for both normal and accident conditions. NEI 97–06, Rev. 2 and RG 1.121 are used as the basis in the development of the limited tubesheet inspection depth methodology for determining that steam generator tube integrity considerations are maintained within acceptable limits. RG 1.121 describes a method acceptable to the NRC staff for meeting GDC 14, 15, 31, and 32 by reducing the probability and consequences of an SGTR. RG 1.121 concludes that by determining the limiting safe conditions of tube wall degradation beyond which tubes with unacceptable cracking, as established by inservice inspection, should be removed from service or repaired, the probability and consequences of a SGTR are reduced. This RG uses safety factors on loads for tube burst that are consistent with the requirements of Section III of the ASME Code.

For axially oriented cracking located within the tubesheet, tube burst is precluded due to the presence of the tubesheet. For circumferentially oriented cracking in a tube or the tube-to-tubesheet weld, Reference 4 defines a length of remaining tube ligament that provides the necessary resistance to tube pullout due to the pressure induced forces (with applicable safety factors applied). Additionally, it is shown that application of the limited tubesheet inspection depth criteria will not result in unacceptable primary-to-secondary leakage during all plant conditions.

Based on the above, it is concluded that the proposed changes do not result in any reduction of margin with respect to plant safety as defined in the Updated Final Safety Analysis Report or bases of the plant Technical Specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Counsel, Dominion Resources Services, Inc., Building 475, 5th Floor, Rope Ferry Road, Waterford, CT 06385.

NRC Branch Chief: Harold K. Chernoff.

Exelon Generation Company, LLC, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: October 19, 2007, supplemented by letters dated March 14, 2008, and March 26, 2008.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The proposed changes would increase the allowed interval between local power range monitor (LPRM) calibrations from 1000 effective full power hours (EFPH) to 2000 EFPH as specified in the Limerick Generating Station (LGS), Units 1 and 2, technical specifications. The proposed interval increase is enabled by improvements in core monitoring processes and nuclear instrumentation that have occurred since LGS, Units 1 and 2, were originally licensed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented, with NRC staff annotations in brackets, below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment revises the surveillance interval for the Local Power Range Monitor (LPRM) calibrations from 1000 Effective Full Power Hours (EFPH) to 2000 EFPH. Increasing the frequency interval between required LPRM calibrations is acceptable due to improvements in core monitoring processes and nuclear instrumentation and therefore, the revised surveillance interval continues to ensure that the LPRM detector signal is adequately calibrated.

This proposed change will not alter the operation of process variables, structures, systems, or components as described in the LGS Updated Final Safety Analysis Report. The proposed change does not alter the initiation conditions or operational parameters for the LPRM system and there is no new equipment introduced by the extension of the LPRM calibration interval. The performance of the APRM [average power range monitor], OPRM [oscillation power range monitor], RBM [rod block monitor], and 3D MONICORE [core monitoring] systems [are] not significantly affected by the proposed surveillance interval increase. As such, the probability of occurrence of a previously evaluated accident is not increased.

The radiological consequences of an accident can be affected by the thermal limits existing at the time of the postulated accident; however, LPRM chamber exposure has no significant effect on the calculated thermal limits since LPRM accuracy does not significantly deviate with exposure. For the LPRM extended calibration interval, the total [bundle] power uncertainty remains [within the accuracy assumptions of the thermal limit calculation]. Therefore, the thermal limit calculation is not significantly affected by LPRM calibration frequency, and thus the radiological consequences of any accident previously evaluated are not significantly increased.

Therefore, based on the above information, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The performance of the APRM, OPRM, RBM, and 3D MONICORE systems is not significantly affected by the proposed LPRM surveillance interval increase. The proposed change does not affect the control parameters governing unit operation or the response of plant equipment to transient conditions. The proposed change does not change or introduce any new equipment, modes of system operation or failure mechanisms.

Therefore, based on the above information, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change has no impact on equipment design or fundamental operation, and there are no changes being made to safety limits or safety system allowable values that would adversely affect plant safety as a result of the proposed LPRM surveillance interval increase. The performance of the APRM, OPRM, RBM, and 3D MONICORE systems is not significantly affected by the proposed change. The margin of safety can be affected by the thermal limits existing at the time of the postulated accident; however, uncertainties associated with LPRM chamber exposure have no significant effect on the calculated thermal limits. The thermal limit calculation is not significantly affected since LPRM sensitivity with exposure is well defined. LPRM accuracy, [even when including an allowance for an increased uncertainty associated with the LPRM update interval] remains within the [assumptions] in the thermal analysis basis; thereby maintaining thermal limits and the safety margin. The proposed change does

not affect safety analysis assumptions or initial conditions and therefore, the margin of safety in the original safety analyses are maintained.

Therefore, based on the above information, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, with changes in the areas noted above, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: J. Bradley Fewell, Esquire, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Harold K. Chernoff.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendment request: December 20, 2007.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The proposed amendment would revise Technical Specification (TS) 3.3.1, ''Reactor Trip System (RTS) Instrumentation,'' TS 3.3.2, ''Engineered Safety Feature Actuation System (ESFAS) Instrumentation,'' TS 3.3.6, ''Containment Purge and Exhaust Isolation Instrumentation,'' TS 3.3.7, ''Control Room Emergency Filtration/Pressurization System (CREFS) Actuation Instrumentation,'' and TS 3.3.8, ''Penetration Room Filtration (PRF) System Actuation Instrumentation'' to adopt Completion Time, bypass test time, and Surveillance Requirement (SR) Frequency changes approved by the Nuclear Regulatory Commission (NRC) in WCAP–14333–P–A, Revision 1, ''Probabilistic Risk Analysis of the reactor protection system (RPS) and ESFAS Test Times and Completion Times,'' October 1998 and WCAP–15376–P–A, Revision 1, ''Risk-Informed Assessment of the RTS and ESFAS Surveillance Test Intervals and Reactor Trip Breaker Test and Completion Times,'' March 2003. In addition, the proposed amendments would revise SR 3.3.1.8 to adopt Surveillance Frequency changes approved by the NRC in Industry/Technical Specification Task Force (TSTF) Standard Technical Specification (STS) Change Traveler 242, Revision 1, ''Increase the time to perform a channel operational test (COT) on Power Range and Intermediate Range Instruments.'' Also, the proposed amendments would revise the Completion Times of limiting condition for operation (LCO) 3.3.1, Condition F from 2 hours to 24 hours consistent with changes approved by the NRC in Industry/TSTF STS Change Traveler 246, Revision 0, ''RTS Instrumentation, 3.3.1 Condition F Completion Time.'' Finally, the proposed amendments would provide for minor editorial changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No

Overall protection system performance will remain within the bounds of the previously performed accident analyses since no hardware changes are proposed. The same reactor trip system (RTS) and engineered safety features actuation system (ESFAS) instrumentation will continue to be used. The protection systems will continue to function in a manner consistent with the plant design basis. These changes to the Technical Specifications do not result in a condition where the design, material, or construction standards that were applicable prior to the change are altered.

The proposed changes will not modify any system interface. The proposed changes will not affect the probability of any event initiators. There will be no degradation in the performance of or an increase in the number of challenges imposed on safety-related equipment assumed to function during an accident situation. There will be no change to normal plant operating parameters or accident mitigation performance. The proposed changes will not alter any assumptions or change any mitigation actions in the radiological consequence evaluation in the updated [final safety analysis report] FSAR.

The determination that the results of the proposed changes are acceptable was established in the NRC Safety Evaluations prepared for WCAP–14333–P–A (issued by letter dated July 15, 1998) and for WCAP–15376–P–A (issued by letter dated December 20, 2002). Implementation of the proposed changes will not result in a significant risk impact. Applicability of these conclusions has been verified through plant-specific reviews and implementation of the generic analysis results in accordance with the respective NRC Safety Evaluation conditions.

The proposed changes to the Completion Times, bypass test times, and Surveillance Frequencies reduce the potential for inadvertent reactor trips and spurious ESF [engineered safety feature] actuations, and therefore, do not increase the probability of any accident previously evaluated. The proposed changes do not change the response of the plant to any accidents and do not have a significant impact on the reliability of the RTS and ESFAS signals. The RTS and ESFAS will remain highly reliable, and the proposed changes will not result in a significant increase in the risk of plant operation. This is demonstrated by showing that the impact on plant safety as measured by the increase in core damage frequency (CDF) is less than 1.0E–06 per year and the increase in large early release frequency (LERF) is less than 1.0E–07 per year. In addition, for the Completion Time changes, the incremental conditional core damage probabilities (ICCDP) and incremental conditional large early release probabilities (ICLERP) are less than 5.0E–07 and 5.0E–08, respectively. These changes meet the acceptance criteria in Regulatory Guides 1.174 and 1.177. Therefore, since the RTS and ESFAS will continue to perform their functions with high reliability as originally assumed, and the increase in risk as measured by ΔCDF, ΔLERF, ICCDP, ICLERP risk metrics is within the acceptance criteria of existing regulatory guidance, there will not be a significant increase in the consequences of any accidents.

The proposed changes do not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, or configuration of the facility or the manner in which the plant is operated and maintained. The proposed changes do not alter or prevent the ability of structures, systems, and components (SSCs) from performing their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed changes do not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated. The proposed changes are consistent with safety analysis assumptions and resultant consequences.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes will not affect the normal method of plant operation. No performance requirements will be affected or eliminated. The proposed changes will not result in any hardware changes or physical alteration to any plant system, nor will there be any change in the method by which any safety-related plant system performs its safety function. There will be no setpoint changes or changes to accident analysis assumptions.

No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of these changes. There will be no adverse effect or challenges imposed on any safety-related system as a result of these changes.

Therefore, the proposed changes do not create the possibility of a new or different

kind of accident from any accident previously evaluated.

(3) Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The proposed changes do not affect the acceptance criteria for any analyzed event nor is there a change to any Safety Analysis Limit. There will be no effect on the manner in which safety limits, limiting safety system settings (LSSS), or limiting conditions for operation are determined nor will there be any effect on those plant systems necessary to assure the accomplishment of protection functions. There is no impact on the supporting RTS and ESFAS setpoint uncertainty calculations or the LSSS trip setpoint safety margin. There will be no impact on the overpower limit, DNBR [departure from nucleate boiling ratio] limits, F_Q, FΔH, LOCA [loss-of-coolant accident] PCT [peak cladding temperature], peak local power density, or any other margin of safety. The radiological dose consequence acceptance criteria listed in the Standard Review Plan will continue to be met.

Redundant RTS and ESFAS trains are maintained, and diversity with regard to the signals that provide reactor trip and engineered safety features actuation is also maintained. All signals credited as primary or secondary, and all operator actions credited in the accident analyses will remain the same. The proposed changes will not result in plant operation in a configuration outside the design basis. The calculated impact on risk is not significant and meets the acceptance criteria contained in Regulatory Guides 1.174 and 1.177. Although there was no attempt to quantify any positive human factors benefit due to increased Completion Times and bypass test times, it is expected that there would be a net benefit due to a reduced potential for spurious reactor trips and actuations associated with testing.

Implementation of the proposed changes is expected to result in an overall improvement in safety, as follows:

(a) Reduced testing will result in fewer inadvertent reactor trips, less frequent actuation of ESFAS components, and less frequent distraction of operations personnel, without significantly affecting RTS and ESFAS reliability.

(b) Improvements in the effectiveness of the operating staff in monitoring and controlling plant operation will be realized. This is due to less frequent distraction of the operators and shift supervisor to attend to instrumentation Required Actions with short Completion Times.

(c) The Completion Time extensions for the reactor trip breakers will provide additional time to complete test and maintenance activities while at power, potentially reducing the number of forced outages related to compliance with reactor trip breaker Completion Times, and provide consistency with the Completion Times for the logic trains.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M. Stanford Blanton, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201.

NRC Branch Chief: Melanie C. Wong.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information (SUNSI) and Safeguards Information (SGI) for Contention Preparation

Dominion Nuclear Connecticut Inc., et al., Docket No. 50–423, Millstone Power Station, Unit No. 3, New London County, Connecticut

Exelon Generation Company, LLC, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Southern Nuclear Operating Company, Inc., Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

1. This order contains instructions regarding how potential parties to the proceedings listed above may request access to documents containing sensitive unclassified information (SUNSI and SGI).

2. Within ten (10) days after publication of this notice of opportunity for hearing, any potential party as defined in 10 CFR 2.4 who believes access to SUNSI or SGI is necessary for a response to the notice may request access to SUNSI or SGI. A ''potential party'' is any person who intends or may intend to participate as a party by demonstrating standing and the filing of an admissible contention under 10 CFR 2.309. Requests submitted later than ten (10) days will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

3. The requester shall submit a letter requesting permission to access SUNSI and/or SGI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, MD 20852. The e-mail address for the Office of the Secretary and the Office of the General Counsel are *HearingDocket@nrc.gov* and *OGCmail@nrc.gov,* respectively.[1] The request must include the following information:

a. A description of the licensing action with a citation to this **Federal Register** notice of opportunity for hearing;

b. The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in (a);

c. If the request is for SUNSI, the identity of the individual requesting access to SUNSI and the requester's need for the information in order to meaningfully participate in this adjudicatory proceeding, particularly why publicly available versions of the application would not be sufficient to provide the basis and specificity for a proffered contention;

d. If the request is for SGI, the identity of the individual requesting access to SGI and the identity of any expert, consultant or assistant who will aid the requester in evaluating the SGI, and information that shows:

(i) Why the information is indispensable to meaningful participation in this licensing proceeding; and

(ii) The technical competence (demonstrable knowledge, skill, experience, training or education) of the requester to understand and use (or evaluate) the requested information to provide the basis and specificity for a proffered contention. The technical competence of a potential party or its counsel may be shown by reliance on a qualified expert, consultant or assistant who demonstrates technical competence as well as trustworthiness and reliability, and who agrees to sign a non-disclosure affidavit and be bound by the terms of a protective order; and

e. If the request is for SGI, Form SF–85, ''Questionnaire for Non-Sensitive Positions,'' Form FD–258 (fingerprint card), and a credit check release form completed by the individual who seeks access to SGI and each individual who will aid the requester in evaluating the SGI. For security reasons, Form SF–85 can only be submitted electronically, through a restricted-access database. To obtain online access to the form, the requester should contact the NRC's Office of Administration at 301–415–

[1] See footnote 6. While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SUNSI and/or SGI under these procedures should be submitted as described in this paragraph.

0320.[2] The other completed forms must be signed in original ink, accompanied by a check or money order payable in the amount of $191.00 to the U.S. Nuclear Regulatory Commission for each individual, and mailed to the: Office of Administration, Security Processing Unit, Mail Stop T–6E46, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0012.

These forms will be used to initiate the background check, which includes fingerprinting as part of a criminal history records check.

Note: Copies of these forms do not need to be included with the request letter to the Office of the Secretary, but the request letter should state that the forms and fees have been submitted as described above.

4. To avoid delays in processing requests for access to SGI, all forms should be reviewed for completeness and accuracy (including legibility) before submitting them to the NRC. Incomplete packages will be returned to the sender and will not be processed.

5. Based on an evaluation of the information submitted under items 2 and 3.a through 3.d, above, the NRC staff will determine within ten days of receipt of the written access request whether (1) there is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding, and (2) there is a legitimate need for access to SUNSI or need to know the SGI requested. For SGI, the need to know determination is made based on whether the information requested is necessary (*i.e.*, indispensable) for the proposed recipient to proffer and litigate a specific contention in this NRC proceeding[3] and whether the proposed recipient has the technical competence (demonstrable knowledge, skill, training, education, or experience) to evaluate and use the specific SGI requested in this proceeding.

6. If standing and need to know SGI are shown, the NRC staff will further determine based upon completion of the background check whether the proposed recipient is trustworthy and reliable. The NRC staff will conduct (as necessary) an inspection to confirm that the recipient's information protection systems are sufficient to protect SGI from inadvertent release or disclosure. Recipients may opt to view SGI at the NRC's facility rather than establish their own SGI protection program to meet SGI protection requirements.

7. A request for access to SUNSI or SGI will be granted if:

a. The request has demonstrated that there is a reasonable basis to believe that a potential party is likely to establish standing to intervene or to otherwise participate as a party in this proceeding;

b. The proposed recipient of the information has demonstrated a need for SUNSI or a need to know for SGI, and that the proposed recipient of SGI is trustworthy and reliable;

c. The proposed recipient of the information has executed a Non-Disclosure Agreement or Affidavit and agrees to be bound by the terms of a Protective Order setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI and/or SGI; and

d. The presiding officer has issued a protective order concerning the information or documents requested.[4] Any protective order issued shall provide that the petitioner must file SUNSI or SGI contentions 25 days after receipt of (or access to) that information. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI or SGI contentions by that later deadline.

8. If the request for access to SUNSI or SGI is granted, the terms and conditions for access to sensitive unclassified information will be set forth in a draft protective order and affidavit of non-disclosure appended to a joint motion by the NRC staff, any other affected parties to this proceeding,[5] and the petitioner(s). If the diligent efforts by the relevant parties or petitioner(s) fail to result in an agreement on the terms and conditions for a draft protective order or non-disclosure affidavit, the relevant parties to the proceeding or the petitioner(s) should notify the presiding officer within ten (10) days, describing the obstacles to the agreement.

9. If the request for access to SUNSI is denied by the NRC staff or a request for access to SGI is denied by NRC staff either after a determination on standing and need to know or, later, after a determination on trustworthiness and reliability, the NRC staff shall briefly state the reasons for the denial. Before the Office of Administration makes an adverse determination regarding access, the proposed recipient must be provided an opportunity to correct or explain information. The requester may challenge the NRC staff's adverse determination with respect to access to SUNSI or with respect to standing or need to know for SGI by filing a challenge within ten (10) days of receipt of that determination with (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer. In the same manner, an SGI requester may challenge an adverse determination on trustworthiness and reliability by filing a challenge within fifteen (15) days of receipt of that determination.

In the same manner, a party other than the requester may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed within ten (10) days of the notification by the NRC staff of its grant of such a request.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[6]

10. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access

[2] The requester will be asked to provide his or her full name, social security number, date and place of birth, telephone number, and e-mail address. After providing this information, the requester usually should be able to obtain access to the online form within one business day.

[3] Broad SGI requests under these procedures are thus highly unlikely to meet the standard for need to know; furthermore, staff redaction of information from requested documents before their release may be appropriate to comport with this requirement. These procedures do not authorize unrestricted disclosure or less scrutiny of a requester's need to know than ordinarily would be applied in connection with an already-admitted contention.

[4] If a presiding officer has not yet been designated, the Chief Administrative Judge will issue such orders, or will appoint a presiding officer to do so.

[5] Parties/persons other than the requester and the NRC staff will be notified by the NRC staff of a favorable access determination (and may participate in the development of such a motion and protective order) if it concerns SUNSI and if the party/person's interest independent of the proceeding would be harmed by the release of the information (*e.g.*, as with proprietary information).

[6] As of October 15, 2007, the NRC's final ''E-Filing Rule'' became effective. See Use of Electronic Submissions in Agency Hearings (72 FR 49139; Aug. 28, 2007). Requesters should note that the filing requirements of that rule apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI/SGI requests submitted to the NRC staff under these procedures.

to SUNSI and/or SGI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR Part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

Dated at Rockville, Maryland, this 30th day of June 2008.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

Attachment 1—General Target Schedule for Processing and Resolving Requests for Access to Sensitive Unclassified Non-Safeguards Information (SUNSI) and Safeguards Information (SGI) in This Proceeding

Day	Event/Activity
0	Publication of **Federal Register** notice of proposed action and opportunity for hearing, including order with instructions for access requests.
10	Deadline for submitting requests for access to SUNSI and/or SGI with information: supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding; demonstrating that access should be granted (*e.g.*, showing technical competence for access to SGI); and, for SGI, including application fee for fingerprint/background check.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI and/or SGI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).
20	NRC staff informs the requester of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows (1) need for SUNSI or (2) need to know for SGI. (For SUNSI, NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents). If NRC staff makes the finding of need to know for SGI and likelihood of standing, NRC staff begins background check (including fingerprinting for a criminal history records check), information processing (preparation of redactions or review of redacted documents), and readiness inspections.
25	If NRC staff finds no "need," "need to know," or likelihood of standing, the deadline for petitioner/requester to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds "need" for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
190	(Receipt +180) If NRC staff finds standing, need to know for SGI, and trustworthiness and reliability, deadline for NRC staff to file motion for Protective Order and draft Non-disclosure Affidavit (or to make a determination that the proposed recipient of SGI is not trustworthy or reliable). Note: Before the Office of Administration makes an adverse determination regarding access, the proposed recipient must be provided an opportunity to correct or explain information.
205	Deadline for petitioner to seek reversal of a final adverse NRC staff determination either before the presiding officer or another designated officer.
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI and/or SGI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI and/or SGI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI or SGI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI and/or SGI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers
B	Decision on contention admission.

[FR Doc. E8–15301 Filed 7–7–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–17205]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment to Byproduct Nuclear Materials License No. 06–19244–01, for Termination of the License and Unrestricted Release of the Delta Lighting Corporation Facility in Stamford, CT

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of Environmental Assessment and Finding of No Significant Impact for License Amendment.

FOR FURTHER INFORMATION CONTACT: Thomas K. Thompson, Sr. Health Physicist, Commercial, Research and Development Branch, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406; telephone (610) 337–5303; fax number (610) 337–5269; or by e-mail: *tkt@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of an amendment to byproduct materials License No. 06–19244–01. This license is held by Delta Lighting Corporation (the Licensee), for its facility located at 200 Henry Avenue, Stamford, Connecticut (the Facility). Issuance of the amendment would authorize release of the Facility for unrestricted use and termination of the NRC license. The Licensee requested this action in a letter dated October 15, 2007. The NRC has prepared an Environmental Assessment (EA) in support of this proposed action in accordance with the requirements of Title 10, Code of Federal Regulations (CFR), Part 51 (10 CFR Part 51). Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate with respect to the proposed action. The amendment will be issued to the Licensee following the publication of this FONSI and EA in the **Federal Register**.

II. Environmental Assessment

Identification of Proposed Action

The proposed action would approve the Licensee's October 15, 2007, license amendment request, resulting in release of the Facility for unrestricted use and the termination of its NRC materials license. License No. 06–19244–01 was issued on May 30, 1980, pursuant to 10 CFR Part 30, and has been amended periodically since that time. This license authorized the Licensee to use sealed sources containing hydrogen-3 to assemble equipment that was distributed to the Department of Defense.

The Facility is comprised of a 5-story building, approximately 635 feet long and 68 foot wide, consisting of office space and laboratories. Within the Facility, use of licensed materials was confined to the east end of the third floor of the building. The Facility is located in a mixed residential/commercial area. Within the Facility, the radionuclide of concern was hydrogen-3 because the half-life of this isotope is greater than 120 days.

On August 16, 2007, the Licensee ceased licensed activities and initiated a survey of the affected areas of the Facility. Based on the Licensee's historical knowledge of the site and the conditions of the Facility, the Licensee determined that only routine decontamination activities, in accordance with the NRC-approved operating radiation safety procedures, would be required. The Licensee was not required to submit a decommissioning plan to the NRC because worker cleanup activities and procedures are consistent with those approved for routine operations. The Licensee conducted surveys of the Facility and provided information to the NRC to demonstrate that it meets the criteria in Subpart E of 10 CFR Part 20 for unrestricted release and for license termination.

Need for the Proposed Action

The Licensee has ceased conducting licensed activities at the Facility, and seeks the unrestricted use of its Facility and the termination of its NRC materials license. Termination of its license would end the Licensee's obligation to pay annual license fees to the NRC.

Environmental Impacts of the Proposed Action

The historical review of licensed activities conducted at the Facility shows that such activities involved use of the following radionuclides with half-lives greater than 120 days: hydrogen-3.

The Licensee conducted a final status survey on August 16, 2007. This survey covered the areas of use in the Facility. The final status survey report was attached to the Licensee's amendment request dated October 15, 2007. The Licensee demonstrated compliance with the radiological criteria for unrestricted release as specified in 10 CFR 20.1402 by using the screening approach described in NUREG–1757, ''Consolidated Decommissioning Guidance,'' Volume 2. The radionuclide-specific derived concentration guideline levels (DCGLs), developed by the NRC, which comply with the dose criterion in 10 CFR 20.1402, were not exceeded. These DCGLs define the maximum amount of residual radioactivity on building surfaces, equipment, and materials, and in soils, that will satisfy the NRC requirements in Subpart E of 10 CFR Part 20 for unrestricted release. The Licensee's final status survey results were below these DCGLs and are in compliance with the As Low As Reasonably Achievable (ALARA) requirement of 10 CFR 20.1402. The NRC thus finds that the Licensee's final status survey results are acceptable. Based on its review, the staff has determined that the affected environment and any environmental impacts associated with the proposed action are bounded by the impacts evaluated by the ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities'' (MUREG–1496) Volumes 1–3 (ML042310492, ML042320379, and ML042330385). The staff finds there were no significant environmental impacts from the use of radioactive material at the Facility. The NRC staff reviewed the docket file records and the final status survey report to identify any non-radiological hazards that may have impacted the environment surrounding the Facility. No such hazards or impacts to the environment were identified. The NRC has identified no other radiological or non-radiological activities in the area that could result in cumulative environmental impacts.

The NRC staff finds that the proposed release of the Facility for unrestricted use and the termination of the NRC materials license is in compliance with 10 CFR 20.1402. Based on its review, the staff considered the impact of the residual radioactivity at the Facility and concluded that the proposed action will not have a significant effect on the quality of the human environment.

Environmental Impacts of the Alternatives to the Proposed Action

Due to the largely administrative nature of the proposed action, its environmental impacts are small. Therefore, the only alternative the staff considered is the no-action alternative, under which the staff would leave things as they are by simply denying the amendment request. This no-action alternative is not feasible because it conflicts with 10 CFR 30.36(d), requiring that decommissioning of byproduct material facilities be completed and approved by the NRC after licensed activities cease. The NRC's analysis of the Licensee's final status survey data confirmed that the Facility meets the requirements of 10 CFR 20.1402 for unrestricted release and for license termination. Additionally, denying the amendment request would result in no change in current environmental impacts. The environmental impacts of the proposed action and the no-action alternative are therefore similar, and the no-action alternative is accordingly not further considered.

Conclusion

The NRC staff has concluded that the proposed action is consistent with the NRC's unrestricted release criteria specified in 10 CFR 20.1402. Because the proposed action will not significantly impact the quality of the human environment, the NRC staff concludes that the proposed action is the preferred alternative.

Agencies and Persons Consulted

NRC provided a draft of this Environmental Assessment to the State of Connecticut, Department of Environmental Protection, Division of Radiation, for review on January 3, 2008. On April 17, 2008, the State of Connecticut responded by electronic mail. The State agreed with the conclusions of the EA, and otherwise had no comments.

The NRC staff has determined that the proposed action is of a procedural nature, and will not affect listed species or critical habitat. Therefore, no further consultation is required under Section 7 of the Endangered Species Act. The NRC staff has also determined that the proposed action is not the type of activity that has the potential to cause effects on historic properties. Therefore, no further consultation is required under Section 106 of the National Historic Preservation Act.

III. Finding of No Significant Impact

The NRC staff has prepared this EA in support of the proposed action. On the basis of this EA, the NRC finds that there are no significant environmental impacts from the proposed action, and that preparation of an environmental impact statement is not warranted. Accordingly, the NRC has determined that a Finding of No Significant Impact is appropriate.

IV. Further Information

Documents related to this action, including the application for license amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The documents related to this action are listed below, along with their ADAMS accession numbers.

NRC License No. 06–19244–01 (ML013040402);
Termination request dated October 15, 2007 (ML072970647);
Additional information on termination request October 31, 2007 (ML073120241);
Additional information on termination request dated December 3, 2007 (ML073410648);
License application dated December 5, 1979 (ML073520073);
License application dated March 25, 1980 (ML073520085);
License application dated July 30, 2001 (ML012220088);
Inspection report dated June 2005 (ML051880266);
NUREG–1757, ''Consolidated NMSS Decommissioning Guidance;''
Title 10 Code of Federal Regulations, Part 20, Subpart E, ''Radiological Criteria for License Termination;''
Title 10, Code of Federal Regulations, Part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions;''
NUREG–1496, ''Generic Environmental Impact Statement in Support of Rulemaking on radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities.''

If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*. These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at King of Prussia, Pennsylvania this 26th day of June 2008.

For the Nuclear Regulatory Commission.

James P. Dwyer,

Chief, Commercial, Research and Development Branch, Division of Nuclear Materials Safety, Region I.

[FR Doc. E8–15409 Filed 7–7–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATE: Weeks of July 7, 14, 21, 28, August 4, 11, 2008.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

Week of July 7, 2008

There are no meetings scheduled for the week of July 7, 2008.

Week of July 14, 2008—Tentative

Thursday, July 17, 2008

1 p.m.
Briefing on Fire Protection Issues (Public Meeting) (Contact: Alex Klein, 301 415–2822).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

Week of July 21, 2008—Tentative

Wednesday, July 23, 2008

1:30 p.m.
Discussion of Security Issues (Closed—Ex. 1 & 3).

Thursday, July 24, 2008

1:30 p.m.
Discussion of Security Issues (Closed—Ex. 1 & 3).

Week of July 28, 2008—Tentative

There are no meetings scheduled for the week of July 28, 2008.

Week of August 4, 2008—Tentative

There are no meetings scheduled for the week of August 4, 2008.

Week of August 11, 2008—Tentative

Tuesday, August 12, 2008

1:30 p.m.
Meeting with FEMA and State and Local Representatives on Offsite Emergency Preparedness Issues (Public Meeting) (Contact: Chris Miller, 301 415–1086).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

Thursday, August 14, 2008

1:30 p.m.
Meeting with Organization of Agreement States (OAS) and Conference of Radiation Control Program Directors (CRCPD) (Public Meeting) (Contact: Andrea Jones, 301 415–2309).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov*.

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Michelle Schroll, (301) 415–1662.

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html*.

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g., braille, large print), please notify the NRC's Disability Program Coordinator, Rohn Brown, at 301–492–2279, TDD: 301–415–2100, or by e-mail at *REB3@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

This notice is distributed by mail to several hundred subscribers; if you no

longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: July 2, 2008.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. 08–1420 Filed 7–3–08; 10:41 am]

BILLING CODE 7590–01–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 19b–1, SEC File No. 270–312, OMB Control No. 3235–0354.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit the existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Section 19(b) of the Investment Company Act of 1940 (the ''Act'') (15 U.S.C. 80a–19(b)) authorizes the Commission to regulate registered investment company (''fund'') distributions of long-term capital gains made more frequently than once every twelve months. Rule 19b–1 under the Act [1] prohibits funds from distributing long-term capital gains more than once every twelve months unless certain conditions are met. Rule 19b–1(c) (17 CFR 270.19b–1(c)) permits unit investment trusts (''UITs'') engaged exclusively in the business of investing in certain eligible fixed-income securities to distribute long-term capital gains more than once every twelve months, if: (i) The capital gains distribution falls within one of several categories specified in the rule [2] and (ii) the distribution is accompanied by a report to the unit holder that clearly describes the distribution as a capital gains distribution (the ''notice requirement''). [3] Rule 19b–1(e) (17 CFR 270.19b–1(e)) permits a fund to apply to the Commission for permission to distribute long-term capital gains more than once a year if the fund did not foresee the circumstances that created the need for the distribution. The application must set forth the pertinent facts and explain the circumstances that justify the distribution. [4] An application that meets those requirements is deemed to be granted unless the Commission denies the request within 15 days after the Commission receives the application.

Commission staff estimates that, on average, each year five funds file an application under rule 19b–1(e). The staff understands that funds that file an application generally use outside counsel to prepare the application. The cost burden of using outside counsel is discussed below. The staff estimates that, on average, the fund's investment adviser spends approximately four hours to review an application, including 3.5 hours by an assistant general counsel, at a cost of $371 per hour, and 0.5 hours by an administrative assistant, at a cost of $65 per hour. [5] Thus, the Commission staff estimates that the annual hour burden of the collection of information imposed by rule 19b–1 is approximately four hours per fund, at a cost of $1331, for a total burden of 20 hours at a cost of $6655. [6]

The Commission staff estimates that there is no hour burden associated with complying with the collection of information component of rule 19b–1(c).

As noted above, the Commission staff understands that funds that file an application under rule 19b–1(e) generally use outside counsel to prepare the application. [7] The staff estimates that, on average, outside counsel spends 10 hours preparing a rule 19b–1(e) application, including eight hours by an associate and two hours by a partner. Outside counsel billing arrangements and rates vary based on numerous factors. Based on conversations with outside counsel and average billing rates of outside counsel the staff estimates that the average cost of outside counsel preparation of the 19b–(e) exemptive application is $5,000. Thus, the staff estimates that the total annual cost burden imposed by the exemptive application requirements of rule 19b–1(e) is $25,000. [8]

The Commission staff estimates that there are approximately 6030 UITs, [9] which may rely on rule 19b–1(c) to make capital gains distributions. The staff estimates that, on average, these UITs rely on rule 19b–1(c) once a year to make a capital gains distribution. [10] In most cases, the trustee of the UIT is responsible for preparing and sending the notices that must accompany a capital gains distribution under rule 19b–1(c)(2). These notices require limited preparation, the cost of which accounts for only a small, indiscrete portion of the comprehensive fee charged by the trustee for its services to the UIT. The staff believes that as a matter of good business practices, and for tax preparation reasons, UITs would collect and distribute the capital gains information required to be sent to unit holders under rule 19b–1(c) even in the absence of the rule. The staff estimates that the cost of preparing a notice for a capital gains distribution under rule 19b–1(c)(2) is approximately $50. There is no separate cost to mail the notices because they are mailed with the capital gains distribution. Thus, the staff estimates that the capital gains distribution notice requirement imposes an annual cost on UITs of approximately $301,500. [11] The staff therefore estimates that the total cost

[1] 17 CFR 270.19b–1.

[2] 17 CFR 270.19b–1(c)(1).

[3] The notice requirement in rule 19b–1(c)(2) (17 CFR 270.19b–1(c)(2)) supplements the notice requirement of section 19(a) [15 U.S.C. 80a–19(a)] and rule 19a–1 [17 CFR 270.19a–1], which requires any distribution in the nature of a dividend payment made by a fund to its investors to be accompanied by a notice disclosing the source of the distribution.

[4] Rule 19b–1(e) also requires that the application comply with rule 0–2 [17 CFR 270.02], which sets forth the general requirements for papers and applications filed with the Commission.

[5] These hourly rate estimates are derived from annual salaries reported in: Securities Industry and Financial Markets Association, Management and Professional Earnings in the Securities Industry (2007) and Securities Industry and Financial Markets Association, Office Salaries in the Securities Industry (2007).

[6] This estimate is based on the following calculations: $1298.50 (3.5 hours × $371 = $1298.5) plus $32.50 (0.5 hours × $65 = $32.50) equals $1331.00 (cost of one application); $1331 × 5 applications = $6655 total cost.

[7] This understanding is based on conversations with representatives from the fund industry.

[8] This estimate is based on the following calculation: $5,000 multiplied by 5 (funds) equals $25,000.

[9] The Investment Company Institute, Unit Investment Trust Data (April, 2008).

[10] The number of times UITs rely on the rule to make capital gains distributions depends on a wide range of factors and, thus, can vary greatly across years. A number of UITs are organized as grantor trusts, and therefore do not generally make capital gains distributions under rule 19b–1(c), or may not rely on rule 19b–1(c) as they do not meet the rule's requirements. Other UITs may distribute capital gains biannually, annually, quarterly, or at other intervals.

[11] This estimate is based on the following calculation: 6030 UITs multiplied by $50 equals $301,500.

imposed by rule 19b–1 is $326,500 ($301,500 plus $25,000 equals $326,500).

Based on these calculations, the total number of respondents for rule 19b–1 is estimated to be 6035 (6030 UIT portfolios + 5 funds filing an application under rule 19b–1(e)), the total annual hour burden is estimated to be 20 hours, and the total annual cost burden is estimated to be $326,500. These estimates of average annual burden hours and costs are made solely for purposes of the Paperwork Reduction Act. The collections of information required by 19b–1(c) and 19b–1(e) are necessary to obtain the benefits described above. Responses will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

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: June 30, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–15356 Filed 7–7–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Rule 236, OMB Control No. 3235–0095, SEC File No. 270–118.

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 the request for extension of the previously approved collection of information discussed below.

Rule 236 (17 CFR 230.236) under the Securities Act of 1933 (''Securities Act'') (15 U.S.C. 77a *et seq.*) requires issuers choosing to rely on an exemption from Securities Act registration for the issuance of fractional shares, scrip certificates or order forms, in connection with a stock dividend, stock split, reverse stock split, conversion, merger or similar transaction, to furnish specified information to the Commission in writing at least 10 days prior to the offering. The information is needed to provide public notice that an issuer is relying on the exemption. Public companies are the likely respondents. The information is needed to establish qualification for reliance on the exemption. The information provided by Rule 236 is required to obtain or retain benefits. All information provided to the Commission is available to the public for review upon request. Approximately 10 respondents file the information required by Rule 236 at an estimated 1.5 hours per response for a total of 15 annual burden hours (1.5 hours per response × 10 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 persons: (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: June 30, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–15357 Filed 7–7–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Regulation S–T; OMB Control No. 3235–0424; SEC File No. 270–375

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 a request for extension of the previously approved collection of information discussed below.

Regulation S–T (17 CFR 232.10—232.313 and 232.401—232.402 and 232.501) sets forth the general rules and regulations for electronic filings. Registrants who have to file electronically are the likely respondents. Regulation S–T is only assigned one burden hour for administrative convenience because it does not directly impose any information collection requirements. The electronic filing requirement is mandatory for all companies required to file electronically. All information provided to the Commission is available to the public for review.

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 persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, 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: June 30, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–15361 Filed 7–7–08; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58055; File No. SR–DTC–2007–12]

Self-Regulatory Organizations; The Depository Trust Company; Order Granting Approval of a Proposed Rule Change Relating to DTC Opening an Omnibus Account at Euroclear Bank

June 27, 2008.

I. Introduction

On September 12, 2007, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–DTC–2007–12 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on November 1, 2007.[2] One comment letter was received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

The proposed rule change allows DTC to open an omnibus account at Euroclear Bank NA/SV (''ECB'') in order to facilitate the repositioning of inventory between European markets and U.S. markets. This would enable more efficient inventory positioning by participants of DTC and ECB as needed in order to settle securities at ECB and at DTC.

The rule change is designed to accommodate dual listing of certain foreign and domestic securities on both U.S. and European trading platforms. One recent example of such a dual listing is the common stock of NYSE Euronext Group. This U.S.-issued security, which resulted from the merger of the NYSE Group and Euronext, is currently registered, listed, and traded in the U.S. on the New York Stock Exchange (''NYSE'') and in Europe on the Euronext platform. It is eligible for settlement at both DTC and ECB. When traded on the NYSE, the security is cleared and settled in the continuous net settlement (''CNS'') system operated by National Securities Clearing Corporation (''NSCC'') with the associated security movements taking place at DTC. When traded on Euronext, the transaction is eligible for clearance through the facilities of LCHClearnet SA and settlement effected by ECB through the local central securities depository (''CSD''). ECB utilizes the services of a U.S. custodian bank as agent to access DTC for position management as it currently does for all other U.S. issues eligible for settlement at ECB. Participants of ECB and DTC have the ability to reposition their inventory of NYSE Euronext common stock between ECB and DTC through this arrangement.

The proposed rule change allows a similar arrangement with ECB for custody and repositioning movements of non-U.S. dually-listed securities held on deposit with ECB to the extent such securities are made eligible for listing and trading on U.S. domestic markets. Under the new rule, ECB would act as DTC's custodian for issues on deposit at ECB-controlled CSDs as well as at other CSDs in ECB's subcustody network. This arrangement would enable DTC participants to settle trades in foreign issues in U.S. dollars executed on a U.S. domestic market through the normal clearance and DTC book-entry settlement processes. Further, DTC/ECB common participants would be able to reposition share balances between their DTC account and their ECB account either directly or through their custodian agent to facilitate settlements of trades in these dually-listed foreign issues executed in either marketplace.

Specifically, the new account would allow for European securities that are listed in the U.S. to be custodied by ECB for DTC. The securities would be credited to an account that is maintained by or on behalf of ECB at a European CSD. The process for creating a position at DTC would be initiated by a participant of the European CSD delivering the securities free to ECB's account or to the account of ECB's agent at the European CSD. ECB would credit DTC's account at ECB, and DTC would then credit the securities to the DTC participant account designated by the delivering participant. The securities would then be available for use at DTC (*e.g.*, to satisfy settlements at DTC). To the extent participants need to move position back to Europe to, for among other reasons, facilitate settlements there, the process would be reversed. Under this arrangement, for a security for which physical certificates have been issued, there would be no need for transporting the physical certificates to or from DTC. Any reregistration of securities from one holder to another that is required due to the market practices of any particular market would be processed by the European registrar for the issue. Any position at DTC would be represented by securities that are registered in the name of the European CSD, ECB or ECB's agent.

ECB would provide subcustody services such as principal and income collection and corporate action processing on securities held in DTC's omnibus account at ECB in accordance with ECB procedures. DTC in turn would provide its participants with principal and income payment and corporate actions services without the need for its participants to interact directly with ECB.

The primary benefits of the rule change are that it should facilitate the expanded dual listing programs of marketplaces operating in the U.S. and Europe and that it should help to reduce the number of transactions that fail on settlement date because of inefficient methods of inventory repositioning. The realization of these benefits would be consistent with DTC's objectives of providing efficient book-entry clearance and settlement facilities and of reducing risk to DTC participants by immobilizing certificates.

III. Comments

The Commission received one comment to the proposed rule change.[3] The comment letter was written on behalf of the Operations Committee of the Securities Industry and Financial Markets Association (''SIFMA''). The comment letter strongly supported the proposed rule change and stated that it would facilitate the efficient processing of cross-border securities transactions and reduce the risk and cost of such transactions.

IV. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible.[4] The proposed rule change would allow DTC to establish an omnibus account with ECB so that DTC participant can reposition securities that are listed on both U.S. and European securities markets for settlement without physically moving certificates outside of DTC's system. This arrangement should reduce much of the time, expense, costs, and risks associated with physically moving certificates between ECB and DTC.

The Commission also believes that DTC has established the omnibus account with ECB in a manner that is consistent with its safeguarding obligations under the Act. In order to

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 56706 (October 26, 2007). 72 FR 61923.

[3] Letter from Noland Cheng, Chairman, Operations Committee, Securities Industry and Financial Markets Association (July 17, 2007).

[4] 15 U.S.C. 78q–1(b)(3)(F).

assure itself that the linking with ECB is safe and prudent, DTC completed an extensive review of such things as: (1) ECB's operational controls, financial strength, technology capabilities, and audit arrangements; (2) Belgian regulation of ECB; and (3) application and effect of Belgian laws as they pertain to the account.

Accordingly, the Commission finds that the proposed rule change is designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds in the custody or control of the DTC or for which it is responsible.

V. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.[5]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–2007–12) be and hereby is approved.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[6]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–15354 Filed 7–7–08; 8:45 am]

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[5] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formations. 15 U.S.C. 78c(f).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58066; File No. SR–NYSEArca–2008–32]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 2 to Proposed Rule Change Relating to the Minor Rule Plan and Order Granting Accelerated Approval to the Proposed Rule Change as Modified by Amendment No. 2

June 30, 2008.

I. Introduction

On March 18, 2008, NYSE Arca, Inc. (''NYSE Arca'' 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 NYSE Arca Equities, Inc. (''NYSE Arca Equities'') Rule 10.12 (Minor Rule Plan) (''MRP'') and related rules that underlie the MRP. On April 17, 2008, the Exchange submitted Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on April 29, 2008.[3] The Commission received no comments on the proposal. On June 11, 2008, the Exchange filed Amendment No. 2 to the proposed rule change.[4] This notice and order solicits comments from interested persons on Amendment No. 2 and approves the proposal, as modified by Amendment No. 2, on an accelerated basis.

II. Description of the Amended Proposal

The Exchange proposed to amend its Minor Rule Plan and related rules that underlie the MRP, including Rules 5.2(b)(1) (Notification Requirements for Offering of Securities), 6.1 (Adherence to Law), 6.18 (Supervision), 7.38(c) (Odd and Mixed Lots—Prohibitions), and 9.2(c) (Customer Records).

Rule 5.2(b)(1)—Notification Requirements for Offering of Securities

The Exchange proposed to correct an error that was inadvertently created when the NYSE Arca Rules were updated to replace the obsolete term ''Member'' with the term ''ETP Holder.'' The Exchange stated that the intended reference in this rule is to all members of a syndicate and proposed, therefore, to reinsert the correct term ''members.''

Rule 6.1—Adherence to Law and Good Business Practices

The Exchange designated existing Rule 6.1 as Rule 6.1(a) and substituted the word ''fair'' in the rule's requirement that certain actions of ''any ETP Holder shall at all times comply with fair and equitable principles of trade'' with the word ''just.'' The Exchange also proposed to adopt Rule 6.1(b), which would require all ETP Holders, their associated persons, and other participants to adhere to the principles of good business practice in the conduct of their business affairs.[5] Violations of Rule 6.1(b) would be eligible for MRP disposition.

Rule 6.18—Supervision

The current language of Rule 6.18(b) provides that only ETP Holders for whom the Exchange is the Designated Examining Authority (''DEA'') are subject to its supervisory requirements. The Exchange proposed to amend Rule 6.18 to provide that all ETP Holders, regardless of DEA, are subject to Exchange's supervisory requirements. The Exchange also proposed to make violations of Rule 6.18 eligible for MRP disposition.

Rule 7.38(c)—Odd and Mixed Lots—Prohibitions

The Exchange proposed to replace the language in the current paragraph (c) of Rule 7.38 that presently states that all odd-lot violations shall be considered conduct inconsistent with just and equitable principles of trade and to provide instead that it shall be prohibited for ETP Holders, any associated persons thereof, and any other participants to engage in these violations. The Exchange stated that many violations of Exchange odd-lot rules do not necessarily involve the bad faith or unethical conduct.

Rule 9.2(c)—Customer Records

The Exchange proposed to change Rule 9.2(c) by adding the word ''current,'' to clarify and reiterate the obligation that firms with customer accounts must not only keep records of their customer accounts, but also must keep them current.

Rule 10.12—Minor Rule Plan

The Exchange proposed several modifications to the MRP, including to:

- Make several trading rules and record keeping rules eligible for MRP disposition;[6]
- Modify the Recommended Fine Schedule in Rule 10.12(i) so that MRP fines are escalated based not on the number of violations but on the number of times the Exchange has imposed one or more MRP fines upon an ETP Holder for the violation of a particular rule;
- Allow Exchange enforcement staff, as part of an MRP disposition of certain supervisory-related offenses, not only to impose a monetary fine, but also to require the violator to make specified changes to its supervisory or other compliance procedures;
- Enable the Exchange to require violators of Rule 2.21 (Employees of ETP Holders Registration) to remit all

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 56733 (April 22, 2008), 73 FR 23287 (''Notice'').

[4] *See* partial Amendment dated June 11, 2008 (''Amendment No. 2''). The text of Amendment No. 2 is available on the Commission's Web site (*http://www.sec.gov/rules/sro/nysearca.shtml*), at the Commission's Public Reference Room, at NYSE Arca's principal office, and on NYSE Arca's Web site (*http://www.nyse.com*).

[5] This rule is based on the current NYSE Rule 401(a).

[6] *See* Notice, 73 FR at 23288, for a detailed description of these additions.

the fees that they should have paid in connection with the registration pursuant to Rule 2.21, in addition to any MRP fines; and

• Remove from Rule 10.12(f) the provision requiring the Business Conduct Committee to review the issuance of ''each citation'' as the concept of ''floor citations'' does not exist under the equity rules and was inadvertently inserted into the MRP.

II. Discussion

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.[7] In particular, the Commission believes that the proposed rule change relating to both the MRP and the related underlying rules is consistent with Section 6(b)(5) of the Act,[8] which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and to 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 the proposed changes to the Exchange's MRP are consistent with Sections 6(b)(1) and 6(b)(6) of the Act,[9] which require that the rules of an exchange enforce compliance with, and provide appropriate discipline for, violations of Commission and Exchange rules. In addition, because the MRP provides procedural rights to contest the fine and permits disciplinary proceedings on the matter, the Commission believes that the MRP, as amended by this proposal, provides a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d)(1) of the Act.[10] Finally, 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,[11] which governs minor rule violation plans. The Commission believes that the proposed rule change would strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities as a self-regulatory organization 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 NYSE Arca rules and all other rules subject to the imposition of fines under the MRP. The Commission believes that the violation of any self-regulatory organization's rules, as well as Commission rules, is a serious matter. However, the Exchange 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 the Exchange 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 MRP disposition or whether a violation requires formal disciplinary action.

The Commission also finds good cause for approving the proposed rule change, as modified by Amendment No. 2, prior to the thirtieth day after publishing notice of Amendment No. 2 in the **Federal Register**. In Amendment No. 2, the Exchange eliminated references to Rule 6.15 (Miscellaneous Prohibitions), which it originally planned to include in this proposed rule change but will instead handle in a separate rule filing. In addition, in Amendment No. 2, the Exchange proposed certain technical and non-substantive changes to the proposal. These changes do not raise any new or substantial issues. Accordingly, the Commission believes good cause exists to approve the proposal, as modified by Amendment No. 2, on an accelerated basis.

B. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2, including whether Amendment No. 2 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–2008–32 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2008–32. 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 NYSE Arca. 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–2008–32 and should be submitted on or before July 29, 2008.

III. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[12] and Rule 19d–1(c)(2) under the Act[13] that the proposed rule change (SR–NYSEArca–2008–32), as modified by Amendment No. 2 be, and it hereby is, approved on an accelerated basis and declared effective.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–15355 Filed 7–7–08; 8:45 am]

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[7] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78f(b)(1) and 78f(b)(6).

[10] 15 U.S.C. 78f(b)(7) and 78f(d)(1).

[11] 17 CFR 240.19d–1(c)(2).

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 240.19d–1(c)(2).

[14] 17 CFR 200.30–3(a)(12) and 17 CFR 200.30–3(a)(44).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58042; File No. SR–DTC–2008–04]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule To Establish an Alternate Choice in DTC Profile Surety Providers

June 26, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on June 5, 2008, the Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by DTC. DTC filed the proposal pursuant to Section 19(b)(3)(A)(iii) of the Act[2] and Rule 19b–4(f)(4)[3] thereunder so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the rule change is to establish an alternate choice in DTC Surety Providers.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[4]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

DTC's Profile Modification System (''Profile'') is an electronic communication hub between transfer agents that are Direct Registration System (''DRS'') Limited Participants (''Limited Participants'') and brokers that are DRS Participants (''Participants'' and, together with Limited Participants, ''Users'').[5] Profile allows Participants to submit an investor's instruction to move a share position from the investor's Limited Participant account to the Participant's account at DTC (''Electronic Participant Instruction''). Profile also allows Limited Participants to submit an investor's instruction to move a share position from the Participant's account at DTC to an account maintained by the Limited Participant (''Electronic Limited Participant Instruction'' and, together with Electronic Participant Instruction, ''Electronic Instructions''). A User submitting an Electronic Instruction through Profile is required to agree to a Participant Terminal System (''PTS'') screen indemnity (''Screen Indemnity'').[6]

Under DTC's Profile Surety Program (''PSP''),[7] all Users of Profile must procure a surety bond relating to their obligations under such indemnity.[8] PSP requires a surety bond to back the representations a User makes under the Screen Indemnity in the case of a User breaching its representation of authority to initiate the transaction (''Surety Bond''). Participation in PSP requires the payment of an annual premium of $3,150 to a surety provider and a DTC administration fee of $250. The current PSP surety provider provides for a coverage limit of $3 million per occurrence, with an annual aggregate limit of $6 million, which may not allow for the coverage of larger transactions under a single Surety Bond.

DTC is proposing to provide Users of Profile an option to procure a Surety Bond with a higher coverage limit then currently offered. Under the proposal, the Surety Bond with the higher coverage limit will have a limit of $7.5 million per occurrence and an annual aggregate limit of $15 million. Users of this surety provider will be required to pay an annual premium of $6,000 to a surety provider and a DTC administration fee of $250. The intent of this program is to account for the larger value Profile transactions that DRS currently handles, to provide alternate surety options to Users, and for contingency planning. Users will be permitted to participate with each surety provider, but will be required to select only one provider per Profile transaction.

The surety company issuing the Surety Bond will either be a company selected by DTC as the administrator of such program or a surety company selected by the DRS User. If a User elects to use a surety company other than the one DTC has selected, the surety company selected will be required to issue its Surety Bond in a form consistent with the bond issued by the surety company selected by DTC.

The proposed rule change is consistent with Section 17A of the Act,[9] as amended, because it modifies an existing service by establishing an alternate choice for surety providers to provide a broader range of options to safeguard transactions processed within the service.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not yet been solicited or received. DTC will notify the Commission of any written comments received by DTC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78s(b)(3)(A)(iii).

[3] 17 CFR 240.19b–4(f)(4).

[4] The Commission has modified the text of the summaries prepared by DTC.

[5] For a description of Profile, see Securities Exchange Act Release No. 41862 (September 10, 1999), 64 FR 51162 (September 21, 1999) (order approving implementation of Profile).

[6] The Screen Indemnity protects, among others, the party receiving the share position from liability in connection with the transaction arising from a User's breach of the representation of authority and consent to initiate the transaction. For a broader description of the Screen Indemnity, see Securities Exchange Act Release No. 42704 (April 19, 2000), 65 FR 24242 (April 25, 2000) (order approving modification of Profile to incorporate use of the Screen Indemnity).

[7] For a description of PSP, see Securities Exchange Act Release No. 43586 (November 17, 2000), 65 FR 70745 (November 27, 2000).

[8] Pursuant to the DTC Profile Modification System Indemnity Insurance Program (''Indemnity Insurance Program''), Users of Profile may procure Profile Modification System Indemnity Insurance (''Insurance'') relating to a particular transaction according to the value of each individual securities transaction rather than procuring a Surety Bond. The Insurance option provides a coverage limit of $25 million per occurrence per policy and an annual aggregate limit of $100 million. In addition to any pass-through fee from the insurer, DTC charges Users participating in the Indemnity Insurance Program an annual administration fee of $250 and a $2.50 per transaction fee. Securities Exchange Release Act No. 52422 (September 14, 2005), 70 FR 55196 (September 20, 2005).

[9] 15 U.S.C. 78q-1.

the Act [10] and Rule 19b-4(f)(4) [11] thereunder because the proposed rule change effects a change in an existing service of a registered clearing agency that: (i) Does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and (ii) does not significantly affect the respective rights or obligations of the clearing agency or persons using the service. At any time within sixty 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–DTC–2008–04 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–DTC–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 Section, 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 filings also will be available for inspection and copying at the principal office of DTC and on DTC's Web site at *http://www.dtcc.com/downloads/legal/rule_filings/2008/dtc/2008–04.pdf.* 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-DTC–2008–04 and should be submitted on or before July 29, 2008.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–15353 Filed 7–7–08; 8:45 am]

BILLING CODE 8010–01–P

[10] 15 U.S.C. 78s(b)(3)(A)(iii).

[11] 17 CFR 240.19b-4(f)(4).

[12] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 11286 and # 11287]

Indiana Disaster Number IN–00019

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 5.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Indiana (FEMA–1766–DR), dated 06/11/2008.

Incident: Severe Storms, Flooding, and Tornadoes.

Incident Period: 05/30/2008 and continuing.

Effective Date: 06/30/2008.

Physical Loan Application Deadline Date: 08/11/2008.

EIDL Loan Application Deadline Date: 03/11/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of INDIANA, dated 06/11/2008 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans):

Hendricks, Tippecanoe.

Contiguous Counties: (Economic Injury Loans Only):

Indiana: Benton, Carroll, White.

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. E8–15420 Filed 7–7–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 11308]

Illinois Disaster # IL–00016

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Illinois (FEMA–1771–DR), dated 06/24/2008.

Incident: Severe Storms and Flooding.

Incident Period: 06/01/2008 and continuing.

Effective Date: 06/24/2008.

Physical Loan Application Deadline Date: 08/25/2008.

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: Alan Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 06/24/2008, applications for Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Adams, Calhoun, Clark, Coles, Crawford, Cumberland, Hancock, Henderson, Jasper, Lawrence, Mercer, Pike, Rock Island.

The Interest Rates are:

	Percent
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	5.250
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 11308.

(Catalog of Federal Domestic Assistance Number 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E8–15451 Filed 7–7–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 11306 and # 11307]

Illinois Disaster # IL–00015

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Illinois (FEMA–1771–DR), dated 06/25/2008.

Incident: Severe Storms, and Flooding.

Incident Period: 06/01/2008 and continuing.

Effective Date: 06/25/2008.

Physical Loan Application Deadline Date: 08/25/2008.

Economic Injury (EIDL) Loan Application Deadline Date: 03/23/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: Alan Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 06/25/2008, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans):

Adams, Clark, Coles, Crawford, Cumberland, Douglas, Edgar, Hancock, Henderson, Jasper, Lake, Lawrence, Mercer, Winnebago.

Contiguous Counties (Economic Injury Loans Only):

Illinois: Boone, Brown, Champaign, Clay, Cook, Dekalb, Effingham, Henry, Knox, Mcdonough, Mchenry, Moultrie, Ogle, Piatt, Pike, Richland, Rock Island, Schuyler, Shelby, Stephenson, Vermilion, Wabash, Warren.

Iowa: Des Moines, Lee, Louisa.

Indiana: Knox, Sullivan, Vermillion, Vigo.

Missouri: Clark, Lewis, Marion.

Wisconsin: Green, Kenosha, Rock.

The Interest Rates are:

	Percent
Homeowners With Credit Available Elsewhere	5.375
Homeowners Without Credit Available Elsewhere	2.687
Businesses With Credit Available Elsewhere	8.000
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	5.250
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E8–15455 Filed 7–7–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11264 and #11265]

Iowa Disaster Number IA–00015

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 5.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Iowa (FEMA–1763–DR), dated 05/27/2008.

Incident: Severe Storms, Tornadoes, and Flooding.

Incident Period: 05/25/2008 and continuing.

DATES: *Effective Date:* 06/25/2008.

Physical Loan Application Deadline Date: 07/28/2008.

EIDL Loan Application Deadline Date: 02/27/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Iowa, dated 05/27/2008 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans): Boone, Franklin, Hamilton, Wright, Webster, Scott.

Contiguous Counties: (Economic Injury Loans Only):

Iowa: Calhoun, Greene.

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. E8–15499 Filed 7–7–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 11310]

Minnesota Disaster # MN–00015

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Minnesota (FEMA–1772–DR), dated 06/25/2008.

Incident: Severe Storms and Flooding.

Incident Period: 06/07/2008 and continuing.

Effective Date: 06/25/2008.

Physical Loan Application Deadline Date: 08/25/2008.

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: Alan Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 06/25/2008, applications for Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Fillmore, Freeborn, Houston, Mower.

The Interest Rates are:

	Percent
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	5.250
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 11310.

(Catalog of Federal Domestic Assistance Number 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E8–15452 Filed 7–7–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 11309]

Missouri Disaster # MO–00029

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Missouri (FEMA–1773–DR), dated 06/25/2008.

Incident: Severe Storms and Flooding.

Incident Period: 06/01/2008 and continuing.

Effective Date: 06/25/2008.

Physical Loan Application Deadline Date: 08/25/2008.

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: Alan Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 06/25/2008, applications for Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Andrew, Atchison, Buchanan, Cape Girardeau, Clark, Holt, Jefferson, Lewis, Lincoln, Marion, Mississippi, New Madrid, Nodaway, Pemiscot, Perry, Pike, Platte, Ralls, Saint Charles, Saint Louis, Saint Louis City, Sainte Genevieve, Scott.

The Interest Rates are:

	Percent
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	5.250
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 11309.

(Catalog of Federal Domestic Assistance Number 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E8–15453 Filed 7–7–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 11299]

Nebraska Disaster Number NE–00021

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Nebraska (FEMA–1770–DR), dated 06/20/2008.

Incident: Severe Storms, Tornadoes, and Flooding.

Incident Period: 05/22/2008 through 06/24/2008.

Effective Date: 06/24/2008.

Physical Loan Application Deadline Date: 08/19/2008.

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 President's major disaster declaration for Private Non-Profit organizations in the State of Nebraska, dated 06/20/2008, is hereby amended to establish the incident period for this disaster as beginning 05/22/2008 and continuing through 06/24/2008.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E8–15403 Filed 7–7–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 11297 and # 11298]

Nebraska Disaster Number NE–00020

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 Nebraska (FEMA–1770–DR), dated 06/20/2008.

Incident: Severe Storms, Tornadoes, and Flooding.

Incident Period: 05/22/2008 and continuing through 06/24/2008.

Effective Date: 06/24/2008.

Physical Loan Application Deadline Date: 08/19/2008.

EIDL Loan Application Deadline Date: 03/20/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of Nebraska, dated 06/20/2008 is hereby amended to establish the incident period for this disaster as beginning 05/22/2008 and continuing through 06/24/2008.

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. E8–15406 Filed 7–7–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 11288 and # 11289]

Wisconsin Disaster Number WI–00013

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Wisconsin (FEMA—1768—DR), dated 06/14/2008.

Incident: Severe Storms, Tornadoes, and Flooding.

Incident Period: 06/05/2008 and continuing.

Effective Date: 06/24/2008.

Physical Loan Application Deadline Date: 08/13/2008.

EIDL Loan Application Deadline Date: 03/13/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Wisconsin, dated 06/14/2008 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans): Dane, Juneau, Ozaukee.

Contiguous Counties: (Economic Injury Loans Only):

Wisconsin: Jackson. Wood.

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. E8–15408 Filed 7–7–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 11288 and # 11289]

Wisconsin Disaster Number WI–00013

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 4.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Wisconsin (FEMA–1768–DR), dated 06/14/2008.

Incident: Severe Storms, Tornadoes, and Flooding.

Incident Period: 06/05/2008 and continuing.

Effective Date: 06/26/2008.

Physical Loan Application Deadline Date: 08/13/2008.

EIDL Loan Application Deadline Date: 03/13/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Wisconsin, dated 06/14/2008 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans):

Adams, Calumet, Green Lake, Jefferson, La Crosse, Walworth.

Contiguous Counties: (Economic Injury Loans Only):

Minnesota: Winona.

Wisconsin: Brown, Portage, Trempealeau, Jackson, Wood.

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. E8–15478 Filed 7–7–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Small Business Size Standards: Waiver of the Nonmanufacturer Rule

AGENCY: U.S. Small Business Administration.

ACTION: Notice to grant Waiver of the Nonmanufacturer Rule for Televisions.

SUMMARY: The U.S. Small Business Administration (SBA) is granting a waiver of the Nonmanufacturer Rule for Televisions. The basis for waiver is that no small business manufacturers are supplying this class of product to the Federal government. The effect of a waiver would be to allow otherwise qualified regular dealers to supply the products of any domestic manufacturer on a Federal contract set aside for small businesses; service-disabled veteran-owned small businesses or SBA's 8(a) Business Development Program.

DATES: This waiver is effective July 23, 2008.

FOR FURTHER INFORMATION CONTACT: Edith G. Butler, Program Analyst, by telephone at (202) 619–0422; by FAX at (202) 481–1788; or by e-mail *edith.butler@sba.gov.*

SUPPLEMENTARY INFORMATION: Section 8(a)(17) of the Small Business Act (Act), 15 U.S.C. 637(a)(17), requires that recipients of Federal contracts set aside for small businesses, service-disabled veteran-owned small businesses, or SBA's 8(a) Business Development Program provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor of the product. This requirement is commonly referred to as the Nonmanufacturer Rule. The SBA regulations imposing this requirement are found at 13 CFR 121.406(b). Section 8(a)(17)(b)(iv) of the Act authorizes SBA to waive the Nonmanufacturer Rule for any ''class of products'' for which there are no small business manufacturers or processors available to participate in the Federal market.

As implemented in SBA's regulations at 13 CFR 121.1202(c), in order to be considered available to participate in the Federal market for a class of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal government within the last 24 months. The SBA defines ''class of products'' based on six digit coding system. The coding system is the Office of Management and Budget North American Industry Classification System (NAICS). The second is the Product and Service Code required as a data entry field by the Federal Procurement Data System.

The SBA received a request on May 20, 2008, to waive the Nonmanufacturer Rule for Televisions. In response, on June 4, 2008, SBA published in the **Federal Register** a notice of intent to waive the Nonmanufacturer Rule for Televisions. SBA explained in the notice that it was soliciting comments and sources of small business manufacturers of this class of products.

In response to this notice, no comments were received from interested parties. SBA has determined that there are no small business manufacturers of this class of product, and is therefore granting the waiver of the nonmanufacturer Rule for Televisions under NAICS code 334220 and product number 5820.

Dated: July 1, 2008.

Karen C. Hontz,

Director for Government Contracting.

[FR Doc. E8–15384 Filed 7–7–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Region VII Regulatory Fairness Board

AGENCY: U.S. Small Business Administration, Office of the National Ombudsman.

ACTION: Notice of Federal Regulatory Fairness Hearing.

SUMMARY: The SBA is issuing this notice to advise the public of a Federal Regulatory Fairness Hearing in Kansas City, MO. The hearing is open to the public however, advance notice of attendance is requested.

DATES: The hearing will be held on Tuesday, July 22, 2008 from 1:30 p.m. to 4 p.m. Central Standard Time.

ADDRESS: The hearing will be held at the Kansas City District Office, U.S. Small Business Administration, 1000 Walnut, Suite 500 (Fifth Floor), Kansas, City, MO 64106.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), SBA Regional Regulatory Fairness Board and the Office of the National Ombudsman hold Regulatory Fairness hearings across the nation. Issues addressed at these hearings will be directed to the appropriate Federal regulatory agency for a high-level review of fairness of the enforcement action.

The purpose of the hearing is for Business Organizations, Trade Associations, Chambers of Commerce and related organizations serving small business concerns to report experiences regarding unfair or excessive Federal regulatory enforcement issues affecting their members.

FOR FURTHER INFORMATION CONTACT: Gary Cook, District Director, SBA, Kansas City District Office, 1000 Walnut, Suite 500, Kansas City, MO 64106, *telephone:* (816) 426–4900, fax: (202) 481–2024, *e-mail: Gary.cook@sba.gov.* Anyone wishing to testify and/or make a presentation to the Regulatory Fairness Board must contact Gary Cook by July 21, by fax or e-mail in order to be placed on the agenda.

Additionally, if you need accommodations because of a disability or require additional information, please contact Gary Cook at the information above.

For more information, please visit our Web site at *http://www.sba.gov/ombudsman.*

Cherylyn Lebon,

SBA Committee Management Officer.

[FR Doc. E8–15391 Filed 7–7–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 11295 and # 11296]

West Virginia Disaster # WV–00009

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of West Virginia (FEMA–1769–DR), dated 06/19/2008.

Incident: Severe Storms, Tornadoes, Flooding, Mudslides, and Landslides.

Incident Period: 06/03/2008 through 06/07/2008.

Effective Date: 06/19/2008.

Physical Loan Application Deadline Date: 08/19/2008.

Economic Injury (EIDL) Loan Application Deadline Date: 03/17/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: Alan Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 06/19/2008, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Barbour, Doddridge, Gilmer, Harrison, Jackson, Jefferson, Marion, Taylor, Tyler.

Contiguous Counties (Economic Injury Loans Only):

West Virginia: Berkeley, Braxton, Calhoun, Kanawha, Lewis, Mason, Monongalia, Pleasants, Preston, Putnam, Randolph, Ritchie, Roane, Tucker, Upshur, Wetzel, Wirt, Wood.

Maryland: Washington.

Ohio: Meigs, Monroe, Washington.

Virginia: Clarke, Frederick, Loudoun.

The Interest Rates are:

	Percent
Homeowners With Credit Available Elsewhere	5.375
Homeowners Without Credit Available Elsewhere	2.687
Businesses With Credit Available Elsewhere	8.000
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	5.250
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 112956 and for economic injury is 112960.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E8–15421 Filed 7–7–08; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2008–0202]

Senior Executive Service Performance Review Boards Membership

AGENCY: Office of the Secretary, Department of Transportation (DOT).

ACTION: Notice of Performance Review Board (PRB) appointments.

SUMMARY: DOT publishes the names of the persons selected to serve on the various Departmental PRBs as required by 5 U.S.C. 4314(c)(4).

FOR FURTHER INFORMATION CONTACT: Nancy A. Mowry, Director, Departmental Office of Human Resource Management, (202) 366–4088.

SUPPLEMENTARY INFORMATION: The persons named below have been selected to serve on one or more Departmental PRBs.

Issued in Washington, DC, on June 30, 2008.

Linda J. Washington,

Assistant Secretary for Administration.

Department of Transportation

Federal Highway Administration

Alston, Sherri Y., Baxter, John R., Brown, Janice W., Conner, Clara H., Ewen, Paula D., Fong, Gene K., Furst, Anthony T., Gee, King W., Gibbs, David

C., Grossman, Ian M., Halladay, Michael L., Henderson, Gary L., Hochman, Jill L., Holian, Thomas P., Horne, Dwight A., Johnson, Christine M., Judycki, Dennis C., Liff, Diane R., Lindley, Jeffrey A., Lwin, Myint, Marchese, April, McElroy, Regina, Paniati, Jeffrey F., Phillips, Mary B., Prosperi, Patricia A., Ray, James D., Ridenour, Melisa, Row, Shelley J., Shepherd, Gloria M., Sheridan, Margo, Skaer, Frederick C., Smith, Willie H., Stephanos, Peter J., Suarez, Ricardo, Toole, Joseph S., Toole, Patricia, Trentacoste, Michael.

Federal Motor Carrier Safety Administration

Griffith, Michael S., Hartman, Daniel, Horan, Charles A., Hugel, David, McMurray, Rose A., Minor, Larry W., Pelcovits, Pamela M., Quade, William A., Rohde, Suzanne Tebeau, Shelton, Terry T.

Federal Railroad Administration

Cothen, Grady C., Eby, Clifford, El-Sibaie, Magdy A., Haley, Michael T., Leeds, John G., Lindsey, Seth M., Logue, Michael J., Pritchard, Edward W., Reid, Margaret B., Strang, Jo E., Tessler, Mark, Yachmetz, Mark E.

Federal Transit Administration

Biehl, Scott A., Borinsky, Susan C., Doyle, Richard H., Hynes-Cherin, Brigid, Irvin, John W., Linnertz, Ann M., Little, Sherry E., Patrick, Robert C., Rogers, Leslie T., Schruth, Susan E., Simon, Marisol, Taylor, Yvette, Thompson, Letitia, Tuccillo, Robert J.

Maritime Administration

Bohnert, Roger V., Brohl, Helen, Byrne, Joseph, Caponiti, James E., Harrelson, Thomas W., Jones, Taylor E., Kumar, Shashi N., McKeever, Jean E., McMahon, Christopher J., Megginson, Elizabeth R., Pixa, Rand, Rivait, David J., Stewart, Joseph D., Weaver, Janice G.

National Highway Traffic Safety Administration

Abraham, Julie, Amoni, Marilena, Beuse, Nathaniel M., Carra, Joseph S., Cooke, Anthony, Demeter, Kathleen C., Guerci, Lloyd S., Harris, Claude H., Kanianthra, Joseph N., Kratzke, Stephen R., Markison, Marlene K., McLaughlin, Brian, McLaughlin, Susan, Medford, Ronald L., Michael, Jeffrey P., Monk, Michael W., O'Brien, Margaret, Pennington, Rebecca A., Ports, James F., Jr., Saul, Roger A., Simons, James F., Smith, Daniel C., Walter, Gregory A., Wood, Stephen P.

Office of Inspector General

Alves, Theodore P., Beitel, Richard C., Dettelbach, Brian A., Dobbs, David A., Lee, Charles H., Leng, Rebecca C., Tornquist, David, Zabarsky, Mark H.

Office of the Secretary

Allen, Bernestine, Brosnahan, Jennifer R., Cumber, Husein, DeCarme, David G., DeHaan, Robert A., Eisner, Neil R., Fields, George C., Geier, Paul M., Gretch, Paul L., Gros, Simon C., Henry, J. Richard, Herlihy, Thomas W., Heup, Ellen L., Homan, Todd M., Horn, Donald H., Horner, David B., Howard, Laurie, Huntley, Clarence Byrne, Hurdle, Lana T., Jones, Mary N., Kaleta, Judith S., Kendall, Quintin C., Knapp, Rosalind A., Lawson, Linda L., Lowder, Michael W., McDermott, Susan E., Mintz, Dan, Mowry, Nancy A., Neff, Lawrence Ira, Patillo, Jacquelyn R., Petrosino-Woolverton, Marie, Podberesky, Samuel, Privett, Lee A., Reynolds, Michael W., Rodriguez-Lopez, Denise, Schmidt, Robert T., Shaw, Michael E., Trujillo, J Michael, Turmail, Brian G., Washington, Linda J., Wells, John V.

Pipeline and Hazardous Materials Safety Administration

Brigham, Edward A., Edwards, Krista, Gerard, Stacey L., Kunz, David E., Richard, Robert, Wiese, Jeffrey D., Willke, Theodore L.

Research and Innovative Technology Administration

Brecht-Clark, Jan M., Chang, William J., Coonley, Philip S., Dillingham, Steven D., Ennis, Eileen, Keeler, Nelson H., Leone, Kelly, O'Donoghue, Thomas, Tompkins, Curtis J.

St. Lawrence Seaway Development Corporation

Middlebrook, Craig H., Pisani, Salvatore L.

Office of Inspector General (not Department of Transportation employees)

John Hartman, Department of Energy; Michael Delgado, Department of the Treasury; Melissa Heist, Environmental Protection Agency; Sara B. Gibson, Federal Deposit Insurance Corporation; Steve Hardsgrove, Department of the Interior; Robert Taylor, Department of the Treasury; Robert Young, Department of Agriculture; Karen L. Ellis, Department of Agriculture; Ben Wagner, Tennessee Valley Authority; Adrienne Rish, U.S. Agency for International Development; and Andrew Patchan, General Services Administration.

[FR Doc. E8–15415 Filed 7–7–08; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2008–0713]

Notice of Interim Operating Authority Granted to Commercial Air Tour Operators Over National Parks and Tribal Lands Within or Abutting National Parks

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: On October 25, 2002, the Federal Aviation Administration (FAA) published the final rule for Title 14, Code of Federal Regulations part 136, National Parks Air Tour Management (67 FR 65662). The rule became effective on January 23, 2003. On January 27, 2005, the FAA published a notice of opportunity for commercial air tour operators granted interim operating authority (IOA) under the National Parks Air Tour Management Act of 2000 (the Act) to review and self correct annual authorizations (70 FR 3972). The results were published by operator in the **Federal Register** on Thursday, June 23, 2005, (70 FR 36456). The comment due date was set for 70 FR 36456 and the IOA republished in the **Federal Register** on Friday, October 7, 2005 by park instead of by operator (70 FR 58778). This Notice is pursuant to the review and accepting of five (5) New Entrant applications and seeks public comment regarding this matter from interested parties.

DATES: Comments must be received by the FAA by August 7, 2008.

ADDRESSES: Comments must be identified by Docket Number FAA–2008–0713 using the following method:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.

FOR FURTHER INFORMATION CONTACT: Norman R. Elrod, Air Transportation Division, 135 Air Carrier Operations Branch, AFS–250, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 493–5562; e-mail *norman.elrod@faa.gov,* or, Edwin D. Miller, Air Transportation Division, 135 Air Carrier Operations Branch, AFS–250, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8166; e-mail *edwin.miller@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

Provision(s) for new entrant air tour operators are specified in Section 803 of

the Act under (c) Interim Operating Authority, (3) New entrant air tour operators (A), (B), & (C). The five new entrants seeking IOA are listed below:

Operator name	DBA	National park unit/Abutting tribal land	IOA
Kanab, Utah Air Service	NA	Zion NP	120
		Bryce Canyon NP	120
		Rainbow Bridge NM	120
		Canyon Lands NP	120
		Arches NP	120
		Cedar Breaks NM	120
Mauiscape Helicopters	NA	Haleakala NP	4,140
Skycraft Air Service	NA	Volcanoes NP	600
Wings Air	NA	Statue of Liberty NM	1,500
Zip Aviation	NA	Statue of Liberty NM	12,000

Discussion

The operators cited above applied for New Entrant IOA between January of 2003 and November 2005. The FAA, having evaluated the applications, is now prepared to move forward with the application process. This notice fulfills that statutory requirement that mandates the IOA granted under the Act to be published in the **Federal Register** for notice and opportunity for comment.

Issued in Washington, DC, on July 1, 2008.

Gary Davis,

Air Transportation Division, Acting Manager of AFS–200.

[FR Doc. E8–15441 Filed 7–7–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Crow Wing and Mille Lacs Counties, MN

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent to Terminate EIS.

SUMMARY: The FHWA is issuing this notice to advise the public that the Environmental Impact Statement (EIS) process for proposed highway improvements to Trunk Highway (TH) 169 in Crow Wing and Mille Lacs Counties, Minnesota is terminated. The original Notice of Intent for this EIS process was published in the **Federal Register** on July 17, 2000. A Revised Notice of Intent to revise the northern terminus was published in the **Federal Register** on February 4, 2002.

FOR FURTHER INFORMATION CONTACT: Cheryl Martin, Environmental Engineer, Federal Highway Administration, Galtier Plaza, Suite 500, 380 Jackson Street, St. Paul, Minnesota 55101, Telephone (651) 291–6120; or James Haligren, P.E., Project Manager, Minnesota Department of Transportation—District 3, 1991 Industrial Park Road, Baxter, Minnesota 56425, Telephone (218) 828–5797; (651) 296–9930 TTY.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Minnesota Department of Transportation (Mn/DOT) has terminated the EIS process begun in 2000 to address transportation demand, safety problems, access management, interregional corridor status, design deficiencies and pavement condition on TH 169 from the intersection of TH 27 north of Onamia, Mille Lacs County, Minnesota to the Garrison, Crow Wing County, Minnesota. The Draft EIS for the project was approved on January 25, 2002 and included five build alternatives and the no-build alternative. On May 11, 2006, Mn/DOT notified federal, state and local agencies; tribal governments; interested parties; and the public that work on the EIS was being discontinued due to a lack of identified funding for any of the build alternatives. Mn/DOT will proceed with implementing more affordable and timely safety improvements on existing TH 169. Therefore, the EIS for this project has been terminated.

(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.)

Issued on: June 27, 2008.

Cheryl B. Martin,

Environmental Engineer, Federal Highway Administration, St. Paul, Minnesota.

[FR Doc. E8–15190 Filed 7–7–08; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statements: National Summary of Rescinded Notices of Intent

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: The FHWA is issuing this notice to advise the public that 11 States have rescinded Notices of Intent (NOI) to prepare 19 Environmental Impact Statements (EISs) for proposed highway projects. FHWA Division Offices, in consultation with the State Departments of Transportation (State DOT), determined that 15 of these projects were no longer viable projects and have formally cancelled the projects. No resources will be expended on these projects; the environmental review process has been terminated. Four projects in four States have been reduced in scope and now meet the criteria for an Environmental Assessment (EA) rather than an EIS, or a revised NOI will be issued restarting the EIS process.

FOR FURTHER INFORMATION CONTACT: Lamar Smith, Office of Project Development and Environmental Review, (202) 366–8994; Janet Myers, Office of the Chief Counsel, (202) 366–2019; Federal Highway Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded by accessing the **Federal Register**'s home page at: *http://www.archives.gov* and the Government Printing Office's Web page at *http://www.gpoaccess.gov/nara.*

Background

The FHWA, as lead Federal agency under the National Environmental

Policy Act and in furtherance of its oversight and stewardship responsibilities under the Federal-aid Highway Program, has requested that its Division Offices review, with the State DOTs, the status of all EISs and place those projects that are not actively progressing in a timely manner in an inactive project status. The FHWA maintains lists of active and inactive projects on its Web site at *http://www.environment.fhwa.dot.gov/*. The FHWA has determined that inactive projects that are no longer a priority or that lack resources should be rescinded with a **Federal Register** notice notifying the public that project activity has been terminated. As always, FHWA encourages State DOTs to work with their FHWA Division Office to determine when it is most prudent to initiate an EIS in order to best balance available resources as well as the expectations of the public.

The FHWA is issuing this notice to advise the public that 11 States (Alabama, California, Florida, North Carolina, Oregon, Pennsylvania, Tennessee, Texas, Utah, Virginia, and Washington) have recently rescinded previously issued NOIs for 19 EISs for proposed highway projects. A listing of these projects, general location, original NOI date of publication in the **Federal Register**, and the date that the NOI was formally rescinded by notice published in the **Federal Register**, is provided below. The FHWA Division Offices, in consultation with the State DOTs, determined that 15 of these projects were no longer viable projects and have formally cancelled those projects. Four projects in California, North Carolina, Texas, and Washington have been reduced in scope and now meet the criteria for performing an EA rather than an EIS, or a revised NOI will be issued restarting the environmental review process. The South Stockton Six-Lane Project in Joaquin County, California, and the NE Novelty Hill project in King County, Washington, have been reduced in scope and will undergo analysis as EAs. The Mid-Currituck Sound Bridge Project in Currituck and Dare Counties, North Carolina, issued a notice on June 3, 2008, rescinding the original July 6, 1995, NOI as well as the January 1998 Draft EIS due to project changes including the adaptation of the project by the North Carolina Turnpike Authority. A new NOI for this project is expected. The South Padre Island Second Access Project in Cameron County, Texas, issued a revised NOI to rescind the original July 11, 2003, NOI and start the environmental review process again with an April 23, 2008, NOI.

State	Project name—location	NOI date	Rescinded date
AL	West Mobile Loop—Mobile County	8/28/2002	5/7/2008
AL	Birmingham Northern Beltline Extension—St. Clair County	8/2/2006	4/7/22008
CA	South Stockton Six-Lane Project—Joaquin County	1/29/2002	3/13/2008
FL	Suncoast Parkway 2—Hernando and Citrus Counties	6/11/2002	3/11/2008
FL	Upper Manatee River Road—Manatee County	1/21/2004	3/14/2008
NC	Mid-Currituck Sound Bridge Project—Currituck and Dare Counties	7/6/1995	6/3/2008
OR	Astoria Bypass—Clatsop County	9/28/1994	4/7/2008
PA	Ligonier Truck Route—Westmoreland County	1/29/1993	2/20/2008
TN	Appalachian Development Highway System Corridor K—Polk County	10/28/1999	5/21/2008
TX	South Padre Island Second Access Project—Cameron County	7/11/2003	4/23/2008
TX	Bolivar Bridge—Galveston County	2/10/2006	1/30/2008
TX	SH 122 Roadway between SH 6 and SH99—Fort Bend County	9/16/2002	3/14/2008
UT	I–15 North Corridor—Salt Lake City to Kaysville	1/22/1997	4/10/2008
VA	Outer Connector—Stafford and Spotsylvania Counties	6/1/1995	5/22/2008
VA	I–77/I–81 Improvement Project—Wythe County	5/10/2001	5/22/2008
VA	Interstate 66 Multimodal Transportation and Environmental Study—Fairfax and Prince William Counties.	1/11/2002	5/22/2008
VA	Route 29 South Bypass Improvement Project—near Lynchburg	3/4/2002	5/22/2008
VA	Spotsylvania Parkway—Spotsylvania County	11/15/2002	5/22/2008
WA	NE Novelty Hill—King County	1/18/2001	4/2/2008

(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.)

Issued on: June 30, 2008.

James D. Ray,

Acting Federal Highway Administrator.

[FR Doc. E8–15476 Filed 7–7–08; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–2008–0070]

Exploratory Advanced Research Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice; Request for comments.

SUMMARY: Section 502 of title 23 of the United States Code directs the Secretary of Transportation (Secretary) to establish an Exploratory Advanced Research Program (EARP).

The stated purpose of the EARP is to address longer-term and higher-risk research with potentially dramatic breakthroughs for improving the durability, efficiency, environmental impact, productivity and safety aspects of highway and intermodal transportation systems.

The purpose of this notice is to announce exploratory advanced research that will take place under the EARP, to encourage interest in such work by organizations or individuals conducting related work or anticipating the results of such work, and to solicit comments about the long-term impact of such work on future research, technical innovation, or transportation industry practices.

DATES: FHWA requests comments on or before October 6, 2008 in order to consider and plan for coordination of research.

ADDRESSES: David Kuehn, Office of Corporate Research, Technology and Innovation Management, (202) 493–3414, *david.kuehn@dot.gov;* or Grace Reidy, Office of the Chief Counsel, (202) 366–6226; Federal Highway Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may submit or retrieve comments online through the Document Management System (DMS) at: *http://dms.dot.gov/submit.* The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site. An electronic copy of this notice may be downloaded from the Office of the Federal Register's home page at *http://www.archives.gov* and the Government Printing Office's Web site at *http://www.access.gpo.gov.* 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 a **Federal Register** published on April 11, 2000 (70 FR 19477), or you may visit *http://dms.dot.gov.*

Background

Section 5201(g) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59, 119 Stat. 1144), directed the Secretary to establish an EARP. The program is codified in 23 U.S.C. 502(e).

Section 502(e) specifies that the EARP should address longer-term, higher risk research aimed at breakthroughs to improve the durability, efficiency, environmental impact, productivity and safety aspects of highway and intermodal transportation systems. Section 502(e) also provides that the Secretary should seek to develop partnerships with public and private sector entities. Further, the FHWA Corporate Master Plan for Research and Deployment of Technology & Innovation identifies engaging stakeholders throughout the research and technology process as one of seven guiding principles. An electronic copy of the Corporate Master Plan is available at *http://www.fhwa.dot.gov/legsregs/directives/policy/cmp/03077.htm.*

In 2005, FHWA conducted advanced research think-tank forums in Cambridge, Massachusetts; Minneapolis, Minnesota; and Berkeley, California, bringing together a range of stakeholders to explore future advanced research possibilities relevant to the mission of FHWA. These forums provided a foundation for FHWA to announce and select an initial group of exploratory advanced research projects in 2007.

Also during 2007, research offices within FHWA began meeting with research partners to further define areas of investigation for exploratory advanced research. Once specific research problems were defined, FHWA worked with outside experts from academic institutions, State and local departments of transportation and the private sector to provide technical assessments of exploratory advanced research proposals. FHWA plans to move forward with proposals that have strong scientific and technical merit.

Depending on the research area, some proposals leverage existing facilities, equipment and talent at the Turner Fairbank Highway Research Center (TFHRC). The research focuses on providing solutions to complex technical problems through the development of more economical, environmentally sensitive designs; more efficient, quality-controlled construction practices; and more durable materials. The TFHRC is federally owned and operated and provides FHWA and the world highway community with unique capabilities for the development of highway research, development and technology.

The FHWA is issuing this notice to announce five research proposals that will take place at TFHRC and to encourage organizations that are conducting related work or are interested in the results of such work to comment on this notice. The FHWA seeks methods to share information and to coordinate with other organizations who are conducting related work in the interests of mutual benefit and scientific advancement. Methods may include informal coordination as well as more formal agreements for providing access to facilities and equipment or sharing laboratory data and technical expertise. Further information about the EARP is located at *http://www.fhwa.dot.gov/advancedresearch/research.cfm.*

Following is a summary of the five proposals FHWA plans to undertake as part of a second round of exploratory advanced research. For more detailed descriptions of the proposals, see *http://www.fhwa.dot.gov/advancedresearch/research.cfm#upcoming.*

Title: Greatly Increased Use of Fly Ash in Hydraulic Cement Concrete for Pavement Layers and Transportation Structures—This study will explore the attributes of fly ash to understand how it can be utilized in greater quantities. The outcome of the study could accelerate the identification of technology and innovations to allow the massive use of fly ash from coal-burning that either does not meet current concrete materials specifications or is not used because of practical technical concerns. The fly-ash drawback is the slower set and strength gain. Advanced research is needed to understand potential acceleration techniques to conceive of empirical testing and performance prediction models for these uses. We anticipate that research in this area will answer several questions, including whether there are chemical activation methods that can be used and whether we could eliminate use of any metal that corrodes in concrete in favor of more efficient chloride accelerators.

Title: Volumetric Particle Image Velocimetry (VPIV) System for experimental Bridge Scour Research—A proposed high resolution VPIV system would allow measurement of instantaneous flow volumes around bridge pier models, leading to more precise scour predictive models. It presently is practically impossible, by means of laboratory experiments, to visualize and to measure the entire instantaneous flow field around a bridge pier. Recent experimental investigations using Laser Doppler Velocimetry and Particle Image Velocimetry (PIV) have increased our understanding of the intricate flow structures around bridge piers; a detailed quantitative description of the of necklace vortices at the base of piers and of the turbulent near wake region is still lacking. Laser Doppler Anemometry (LDA) is only capable of measuring point velocities, and PIV is limited to single recording plains. LDA and PIV are both based on optical flow diagnostics using the interaction of light refraction and scattering with inhomogeneous media. Research at the TFHRC Hydraulics Laboratory has focused on using a PIV system developed in-house for measuring instantaneous flow fields around bridge pier models. The existing PIV system also has the capability to map the out-of-plane velocity components using two synchronized cameras to measure the velocity in complex flow situations. The current PIV system has two major limitations: (1) Resolution (sampling rate 15 Hz); and (2) only one recording plane. Therefore, there is a need to

develop a high resolution VPI system that can capture and quantify complex, highly three-dimensional and unsteady flow fields for small-scale bridge scour experiments.

Title: Flexible Skin Areal Shear Stress and Pressure Sensing System for Experimental Bridge Scour Research—This study will explore ways to directly measure instantaneous boundary shear stresses and pressure fields for small scale bridge scour experiments, in order to advance the understanding of bridge scour problems. A direct method to measure boundary shear stress and boundary pressure fluctuations in experimental scour research has historically been a challenge. In addition, available turbulence models cannot account very well for the effect of bed roughness, which is fundamentally important for any Computational Fluid Dynamics simulation. A mechanical shear sensor device that was developed by the TFHRC Hydraulics Research team to measure directly wall shear stress has several limitations. One major challenge is that the sensor only measures point shear stresses. The sensor plate has to be aligned horizontally with the channel bed and cannot be used to measure shear stress in preformed scour holes. Therefore, there is a need to develop a sensing system that can measure instantaneous areal boundary shear stresses and pressure fields for small scale bridge scour experiments. The FHWA desires a sensing system with the flexibility to measure the change in shear-stress and pressure when the scour hole forms.

Title: The Composite Behavior and the Design Requirements of Geosynthetic Reinforced Soil (GRS) Structures—This research will seek to understand how geosynthetic reinforcement interacts with compacted soil to allow for more effective and rational design guidance of GRS walls for highway applications. Many engineers have learned there are several fundamental discrepancies between current Material Science Engineering design methodology and the observed behavior of full-scale GRS earth-geosynthetic composite walls (alternating close layers of geosynthetic reinforcement and compacted fill). The research will improve the understanding of reinforced soil technology and support a paradigm shift into GRS technology. The Material Science Engineering wall industry and related theory is mature to a point where there is reluctance to acknowledge any modified wall design using geosynthetics. However, the evolution of GRS technology using geosynthetic soil composites has created a new engineering material with a niche in earthwork. Fundamental understanding of GRS properties will allow for development of improved design and construction guidance with the potential to lead to considerable change in the industry and an affordable, quick alternative to the current practice.

Title: Advanced Digital Imaging for Accident Prevention and Reducing Traffic Congestion—This research would explore extended range imaging techniques from scientific, art and astronomical photography for application to traffic safety and control. Current video imaging has limitations for use in safety, including erroneous early detection, late detection, failed detection and false positive detections. Attempts to resolve these problems by upgrading existing video technologies have not been successful. A radically different approach using advanced digital imaging technologies might provide a foundation on which to build solid reliable detection technologies with radically lower signal-to-noise ratios. This research might provide the foundation for a different approach to wide-area sensing using scientific-imaging technologies rather than video-broadcasting technologies.

Authority: 23 U.S.C. 502.

Issued on: July 1, 2008.

James D. Ray,

Acting Federal Highway Administrator.

[FR Doc. E8–15477 Filed 7–7–08; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in Ohio

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA, Army Corps of Engineers (USACE), and Other Federal Agencies.

SUMMARY: This notice announces actions taken by the FHWA, USACE, and other Federal agencies that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to a proposed highway project, the Interstate Routes 75 and 475 systems interchange, in the City of Toledo, Lucas County, in the State of Ohio. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before January 5, 2009. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For FHWA: Mr. Adam Johnson, Highway Engineer, Federal Highway Administration, 200 North High Street, Columbus, Ohio 43215; telephone: (614) 280–6843; e-mail: *Adam.Johnson@fhwa.dot.gov*. The FHWA Ohio Division Office's normal business hours are 8 a.m. to 4:30 p.m. (eastern time). For USACE: Ms. Deborah Wegmann, Program Manager, Ohio Regulatory Transportation Office, Building 10, Section 10, 3990 East Broad Street Columbus, Ohio 43218; telephone 614–692–4660; e-mail: *Deborah.Wegmann@lrh01.usace.army.mil*. For the Ohio Department of Transportation: Mr. Timothy Hill, Ohio Department of Transportation, 1980 West Broad Street, Columbus, Ohio 43223; telephone: (614) 644–0377 e-mail: *Tim.Hill@dot.state.oh.us*.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA, USACE, and other Federal agencies have taken final agency actions by issuing licenses, permits, and approvals for the following highway project in the State of Ohio: Beginning from the south along I–75 at the Detroit Avenue Interchange (Delaware Avenue bridge and CSX railroad over I–75 not included), thence north to the systems interchange. Continuing on to about 1,800 ft past the Lagrange Street Bridge over I–75. The project length along I–75 is approximately 7.0 miles. Beginning from the west along I–475, just west of the Douglas Road bridge over I–475, thence east to the systems interchange. The project length along I–475 is approximately 2.1 miles. The proposed project will generally be on existing alignment and involves upgrading of a systems interchange, reconfiguration of two full interchanges and one partial interchange, construction of one new interchange, rehabilitation and reconstruction of 13 existing bridges, and 9 proposed bridges. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Environmental Assessment (EA) for the project, approved on October 16, 2006, in the Finding of No Significant Impact (FONSI) issued on March 21, 2008, and in other documents in the FHWA administrative record. The EA, FONSI,

and other documents in the FHWA administrative record file are available by contacting the FHWA or the Ohio Department of Transportation at the addresses provided above. The EA and FONSI can be viewed at the Toledo—Lucas County Public Libraries (Main, Sanger, West Toledo, Kent, and Lagrange Branches), the City of Toledo—Division of Transportation Office, ODOT District 2 Office in Bowling Green, City of Toledo—Clerk of Council Office, City of Toledo—Division of Streets, Bridges, and Harbor, and the Toledo Metropolitan Area Council of Governments (TMACOG).

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109].
2. *Air:* Clean Air Act, 42 U.S.C. 7401–7671(q).
3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303.]
4. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536], Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)], Migratory Bird Treaty Act [16 U.S.C. 703–712].
5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–11]; Archeological and Historic Preservation Act [16 U.S.C. 469–469(c)].
6. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].
7. *Wetlands and Water Resources:* Clean Water Act, 33 U.S.C. 1251–1377 (Section 404, Section 401, Section 319); Land and Water Conservation Fund (LWCF), 16 U.S.C. 4601–4604; Safe Drinking Water Act (SDWA), 42 U.S.C. 300(f)–300(j)(6); Rivers and Harbors Act of 1899, 33 U.S.C. 401–406; Wild and Scenic Rivers Act, 16 U.S.C. 1271–1287; TEA–21 Wetlands Mitigation, 23 U.S.C. 103(b)(6)(m), 133(b)(11); Flood Disaster Protection Act, 42 U.S.C. 4001–4128.
8. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: June 30, 2008.

Herman D. Rodrigo,

Director of Engineering and Operations, Columbus, Ohio.

[FR Doc. E8–15385 Filed 7–7–08; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2008–0113; Notice 1]

Request for Public Comments on Guidance and Recommended Best Importer Practices To Enhance the Safety of Imported Motor Vehicles and Motor Vehicle Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for public comments.

SUMMARY: This notice solicits comments from the public, from importers and manufacturers of motor vehicles and motor vehicle equipment, and from other interested parties concerning best practices to be followed by importers of motor vehicles and motor vehicle equipment to reduce the likelihood of importing products that contain defects related to motor vehicle safety or do not comply with applicable Federal motor vehicle safety standards.

DATES: You should submit your comments early enough to ensure that Docket Management receives them not later than August 7, 2008.

ADDRESSES: Comments should refer to the docket and notice numbers above and be submitted by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

Instructions: For detailed instructions on submitting comments, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. Please see the Privacy Act heading below.

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://DocketInfo.dot.gov*.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and follow the online instructions for accessing the docket or visit the docket at the street address listed above.

FOR FURTHER INFORMATION CONTACT: Clint Lindsay, Office of Vehicle Safety Compliance, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590 (202–366–5288).

SUPPLEMENTARY INFORMATION:

I. Background

A. National Highway Traffic Safety Administration

The National Highway Traffic Safety Administration (NHTSA) administers the National Traffic and Motor Vehicle Safety Act of 1966, as amended, 49 U.S.C. chapter 301 (the Vehicle Safety Act). Under that authority, NHTSA issues and enforces Federal motor vehicle safety standards (FMVSS) that apply to motor vehicles and to certain items of motor vehicle equipment. NHTSA also monitors motor vehicles and items of motor vehicle equipment that are imported into the United States for compliance with applicable FMVSS. In recent years, an ever-increasing number of motor vehicles and motor vehicle equipment items sold in the United States have been imported. For example, in 1996 imported tires comprised just 19 percent of the 282 million tires sold that year in the United States. By 2006, imported tires rose to 46 percent of all tire sales, with 140 million tires being imported. Nearly all motorcycle helmets are now imported, as is the case for a large percentage of vehicle lighting equipment sold in this country.

NHTSA's enforcement program has two major elements, compliance testing and defects investigation. As the volume

of motor vehicle and equipment imports has increased, NHTSA's scrutiny of those imports through both compliance testing and defect investigations has also grown. However, recent experience has demonstrated that companies importing products regulated by NHTSA, particularly motor vehicle equipment, play an especially important role in ensuring that those items comply with the FMVSS and are not likely to be defective. At the same time, both NHTSA's recent experience and that of other agencies with regulatory authority over the safety of imported goods indicate that the entire importing community could benefit by following practices that help ensure the safety of imported products and reduce the likelihood of unsafe products entering the United States.

B. The Interagency Working Group Report—Strategic Framework

On July 18, 2007, the President issued Executive Order 13439 to establish the Interagency Working Group on Import Safety (the ''Working Group''). The Department of Transportation, including NHTSA, participated in the Working Group. As part of its mission, the Working Group identified strategies that could be pursued within existing resources to promote the safety of imported products. To begin identifying best practices for import safety, the Working Group held consultations with the private sector, reviewed current import safety procedures and methods, surveyed the authorities and practices of Federal agencies, and worked with the importing community. The Working Group recognized that U.S. importers are responsible for ensuring the safety of regulated products they import into the United States and should follow best practices to assure safety through methods that include: (1) Selecting foreign manufacturers to produce their products; (2) inspecting foreign manufacturing facilities; (3) inspecting goods produced on their behalf either before export or before distribution in the United States; (4) identifying the product's country of origin; and (5) safeguarding the supply chain.

In September 2007, the Working Group published a report entitled *''Protecting American Consumers Every Step of the Way: A Strategic Framework for Continual Improvement in Import Safety''* (the ''Strategic Framework''), which inaugurated the process of identifying action steps needed to enhance the safety of imported products.[1] The Strategic Framework promotes taking a cost-effective, risk-based approach that has the following key principles:

(1) Prevention—Prevent harm in the first place. The Strategic Framework recognizes that the Federal government must work with the private sector and with foreign governments to adopt an approach to import safety that builds safety into the manufacturing and distribution processes;

(2) Intervention—Intervene when risks are identified. The Strategic Framework encourages Federal, state, local, and foreign governments, along with foreign manufacturers and the importing community, to adopt more effective techniques for identifying potential noncompliant and/or defective products. When problems are identified, the Strategic Framework recognizes that government officials must act swiftly, and in a coordinated manner, to seize, destroy or otherwise prevent noncompliant and/or defective products from advancing beyond the point-of-entry; and

(3) Response—Respond rapidly after harm has occurred. In the event that an unsafe imported product makes its way into domestic commerce, the Strategic Framework recommends swift action to limit potential exposure and harm to the American public.

C. Working Group—Action Plan

The Working Group promised to solicit extensive comments and recommendations from the public, and to provide an action plan by mid-November. On November 6, 2007, the Working Group submitted its report entitled *''Action Plan for Import Safety: A roadmap for continual improvement''* (the ''Action Plan'').[2] As described in the Action Plan, that document represents the culmination of thousands of hours of research and analysis, as well as public comment received from hundreds of stakeholders. In the Action Plan, the Working Group set forth 14 broad recommendations and 50 specific action steps based on the key principles described above—Prevention, Intervention, and Response. For each of these key principles, the Action Plan identifies the cross-cutting building blocks that departments and agencies should use to guide their import safety programs. Building Block Number 2, with the subject heading *Increase Accountability, Enforcement, and Deterrence*, acknowledges that while it is important to remember that industry has a financial interest to sell safe products to consumers, all stakeholders involved in the production, distribution, and sale of imports must be held accountable to ensure that imported products meet Federal safety standards in the United States. The Action Plan recommended that Federal agencies ''work with the importing community and other members of the public to develop Good Importer Practices and issue guidance with respect to particular product categories.''[3] Although some members of the importing community have established best practices on their own, the majority of importers do not have available best practices that are focused on ensuring product safety. The Working Group believes that by developing best importer practices, the entire importing community may benefit from taking appropriate steps to ensure the safety of imported products and to reduce the likelihood of unsafe products entering the United States.

II. NHTSA's Implementation of the Working Group's Recommendation on Best Importer Practices

The Action Plan encourages Federal agencies to work with the importing community to develop best importer practices that will provide strategies for evaluating foreign suppliers and imported products. The Food and Drug Administration (FDA) is in the process of issuing a set of Good Importer Practice recommendations on behalf of select Federal agencies and departments that are members of the Interagency Working Group on Import Safety. Those departments and agencies include the Consumer Product Safety Commission, the Environmental Protection Agency, the U.S. Department of Agriculture, the U.S. Department of Commerce, the U.S. Department of Health and Human Services, the U.S. Department of Homeland Security, and the U.S. Department of Transportation (DOT). As the DOT representative to this working group, NHTSA has participated in the development of the Good Importer Practice recommendations that are awaiting issuance by the FDA. Those recommendations are intended to be generic in nature, and not specific to the products that are regulated by any particular Federal agency. In contrast, the Best Importer Practice recommendations that are the subject of this notice are intended for importers of

[1] Interagency Working Group on Import Safety, ''*Protecting American Consumers Every Step of the Way: A strategic framework for continual improvement in import safety*'' (Washington, DC, September 2007) *http://www.importsafety.gov/report/report.pdf.*

[2] Interagency Working Group on Import Safety, ''*Action Plan for Import Safety: A roadmap for continual improvement*'' (Washington, DC, November 2007) *http://www.importsafety.gov/report/actionplan.pdf.*

[3] *The Action Plan*, Recommendation 3.1, pp. 20–21.

motor vehicles and motor vehicle equipment, the products that are regulated by NHTSA. The FDA will be publishing a **Federal Register** notice in the future to solicit public comments on the generic Good Importer Practices recommendations.

In this notice, NHTSA begins the process of assembling for guidance and informative purposes a set of suggested best practices for importers of motor vehicles and motor vehicle equipment. NHTSA is not establishing a binding set of rules on best practices or even suggesting that a single set of best practices would apply in all situations. The agency fully realizes that best practices may vary widely depending on the item being imported and the scale of an importer's operations. We also recognize that such practices must remain fluid to account for changes in safety regulations and the global economic environment. Importers remain free to choose the practices that best fit their needs in ensuring compliant and defect-free products. Moreover, these recommended practices do not establish any defenses to any violations of the statutes and regulations that NHTSA administers.

In the paragraphs that follow, we have presented our proposed recommendations on best importer practices under the following headings:

- Fully Understand the Importer's Obligations under Motor Vehicle Safety Statutes and Regulations;
- Exercise Great Care in Selecting Foreign Manufacturers;
- Inspect Foreign Manufacturing Facilities;
- Inspect Goods Either Before They Are Exported to or Distributed in the United States;
- Identify the Product's Country of Origin;
- Establish a Consumer Service Program;
- Contact NHTSA Concerning Manufacturer/Importer Reporting Requirements, Safety Compliance, and Defect Issues; and
- General Assistance with Federal Regulations.

After receiving comments, we will issue a subsequent notice delineating a final set of recommended best practices for informative purposes. We will also post those best practices on the agency's Web site for easy reference.

III. Comments and Recommendations Requested

Under the Vehicle Safety Act, manufacturers, including importers, are responsible for the safety of their products that are sold in or otherwise enter the United States. NHTSA has a standard setting and oversight/enforcement role and may issue guidance that provides valuable information to the affected communities. U.S. consumers provide valuable feedback to manufacturers and to NHTSA, which has a hotline for consumers to report problems with motor vehicles and motor vehicle equipment. To further this objective, the agency is asking the public, the importing community, and both foreign and domestic fabricating manufacturers of motor vehicles and motor vehicle equipment to provide comments and recommendations that address the agency's initial thoughts on the suggested guidance regarding best importer practices set forth below.

We are confident that capable and responsible manufacturers possess a body of knowledge about their respective products that, if shared, could benefit the importing community. We also welcome comments and recommendations from accreditation and certification bodies, as well as professional organizations with interests relating to best practices, particularly in the area of monitoring engineering design and manufacturing processes and facilities, recordkeeping incident to those activities, assessing safety defects and noncompliances and taking needed corrective actions, and facilitating continual process improvements. Commenters who recommend specific best practices should be careful to address the practical impacts that those practices may have on businesses of differing size and the relative costs and benefits of implementing various practices.

IV. Public Participation

How Do I Prepare and Submit Comments?

Your comments must be written in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management identified at the beginning of this document, under **ADDRESSES**.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you must follow the procedures found in 49 CFR part 512. Requests for confidential treatment are submitted to the Chief Counsel, NHTSA, (NCC–111), Room W41–227, 1200 New Jersey Avenue, SE., Washington, DC 20590. Each request must be made in writing, explain the basis for the request and describe the materials for which confidential treatment is sought. Confidential information must be properly marked and accompanied by a certification attesting to the confidential nature of the materials. Each request for confidential treatment should include two copies of the confidential material and one copy from which the information claimed as confidential has been removed. In addition, you should submit two additional copies of the information without the claimed confidential business information to Docket Management at the address given above under **ADDRESSES**.

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date identified at the beginning of this notice under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address and times given at the beginning of this document under **ADDRESSES**.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

(1) Go to the Federal Docket Management System (FDMS) Web page *http://www.regulations.gov*.

(2) On that page, click on ''search for dockets.''

(3) On the next page (*http://www.regulations.gov/fdmspublic/component/main*), select NATIONAL HIGHWAY TRAFFIC SAFETY

ADMINISTRATION from the drop-down menu in the Agency field, enter the Docket ID number and title shown at the heading of this document, and select ''NOTICES'' from the drop-down menu in the Type field.

(4) After entering that information, click on ''submit.''

(5) The next page contains docket summary information for the docket you selected. Click on the comments you wish to see. You may download the comments. Although the comments are imaged documents, instead of the word processing documents, the ''pdf'' versions of the documents are word searchable. Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically search the Docket for new material.

V. Executive Order 12866 on ''Significant Guidance''

On January 18, 2007, the President issued Executive Order (E.O.) 13422, ''Further Amendment to Executive Order 12866 on Regulatory Planning and Review.'' On the same day, in connection with E.O. 13422, the Director of the Office of Management and Budget (OMB) issued OMB Bulletin No. 07–02 on ''Agency Good Guidance Practices.'' The primary focus of E.O. 13422 and OMB Bulletin No. 07–02 is to improve the way the Federal government does business with respect to guidance documents—by increasing their quality, transparency, accountability, and coordination.

Both Executive Order 13422 and OMB Bulletin No. 07–02 define ''guidance documents'' as ''an agency statement of general applicability and future effect, other than a regulatory action, that sets forth a policy on a statutory, regulatory, or technical issue or an interpretation of a statutory or regulatory issue.'' Guidance documents that are not ''significant'' are not covered by E.O.s 13422, 12866, or Bulletin No. 07–02.

A ''significant'' guidance document is one disseminated to regulated entities or the general public that may reasonably be anticipated to:

(1) Lead to an annual effect of $100 million or more or adversely effect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impacts of entitlements, grants, user fees or loan programs or the rights or obligations of recipients thereof; or,

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

Today's proposed ''Best Importer Practices'' document does not meet any of the four stated criteria for a guidance document to be ''significant.'' In fact, one purpose of this draft document is to help manufacturers and importers of motor vehicles and motor vehicle equipment to understand the coordinated roles of NHTSA and U.S. Customs and Border Protection in the import process. Therefore, this document is not subject to E.O. 13422, E.O. 12866, or to OMB Bulletin 07–02. For this reason, no economic analysis of this document has been prepared.

However, since NHTSA recognizes the public interest in this document, we solicit public comment, before issuing a final ''Best Importer Practices'' document. We hope to publish a final guidance document that will be as understandable and as user-friendly as possible for manufacturers and importers of motor vehicles and motor vehicle equipment.

In writing this draft ''Best Practices'' document, we have also voluntarily sought to incorporate E.O. 12866's principles (applicable to rules) that agencies write in ''plain language.'' Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Does this document contain technical language or jargon that is not clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make this document easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make this document easier to understand?

Comments on how this draft document may be made more understandable to manufacturers and importers of motor vehicles and motor vehicle equipment and to the general public are solicited.

In light of the foregoing, NHTSA proposes the following guidance and recommended best practices for importers of motor vehicles and motor vehicle equipment:

Guidance and Recommended Best Practices for Importers of Motor Vehicles and Motor Vehicle Equipment

The National Highway Traffic Safety Administration (NHTSA) is the U.S. government agency responsible for implementing and enforcing the National Traffic and Motor Vehicle Safety Act of 1966, as amended, 49 U.S.C. chapter 301 (the Vehicle Safety Act), and certain other laws relating to motor vehicle safety. Those laws impose distinct duties on manufacturers, including importers, of motor vehicles and motor vehicle equipment intended for on-road use in the United States. Companies that import these products must ensure that the products comply with Federal motor vehicle safety standards (FMVSS). If a product does not comply with an applicable FMVSS or contains a defect related to motor vehicle safety, including a defect that manifests itself after considerable operation in the field, the manufacturer must recall it. Obviously, it is best if the motor vehicle or equipment complies with applicable FMVSS and does not manifest defects. To reduce the likelihood of defects and noncompliances, manufacturers, including importers, should become familiar with the best practices suggested here and adapt them to their specific needs. NHTSA is also very willing to work closely with individual importers to explain our standards, reporting requirements, regulatory program, and enforcement process.

(1) Fully Understand the Importer's Obligations under Motor Vehicle Safety Statutes and Regulations

Before importing motor vehicles or motor vehicle equipment into the United States, it is essential that the importer understand its obligations under Federal statutes and regulations governing vehicle safety. This section summarizes those obligations stemming from the Vehicle Safety Act, which the NHTSA administers.[4]

(a) Certification of Motor Vehicles and Equipment to the Federal Motor Vehicle Safety Standards

The Safety Act authorizes NHTSA to issue the FMVSS, which set minimum performance requirements for motor vehicles and for certain items of motor vehicle equipment. See 49 CFR part 571. In general, motor vehicles are vehicles driven or drawn by mechanical power

[4] It is wise for manufacturers and importers to become familiar with other laws not administered by NHTSA, such as State tort laws, which could impact the decision to sell products in the United States.

and manufactured primarily for use on public roads. Motor vehicles have the following type classifications:

- Buses;
- low-speed vehicles;
- motorcycles;
- multipurpose passenger vehicles;
- passenger cars;
- trailers; and
- trucks.

The following motor vehicle equipment items are also subject to the FMVSS:

- Tires;
- rims;
- brake hoses;
- brake fluid;
- seat belt assemblies;
- lamps, reflective devices, and associated equipment;
- glazing (automotive glass and plastics);
- motorcycle helmets;
- child restraint systems (child safety seats);
- platform lift systems for the mobility impaired;
- rear impact guards for trailers;
- triangular reflective warning devices, and;
- compressed natural gas containers.

The Vehicle Safety Act requires manufacturers to certify that motor vehicles and regulated items of motor vehicle equipment they produce for sale in the United States comply with all applicable FMVSS. See 49 U.S.C. 30115. Motor vehicle equipment items that are not subject to the FMVSS do not require certification; however, such items may be found (by either NHTSA or the manufacturer) to have a safety-related defect, and if so, the manufacturer will have an obligation to furnish owners of the equipment with notification of, and a remedy for, the defect, usually at no charge to the consumer.

Type approval [5] is not required for motor vehicles and motor vehicle equipment sold in the United States. NHTSA does not issue type approval certifications and does not certify any motor vehicles or motor vehicle equipment as complying with applicable FMVSS. Instead, we have a ''self-certification'' process, which places responsibility on the fabricating manufacturer to certify the vehicle or equipment item as complying with the applicable FMVSS. Self-certification reduces the cost and time associated with lengthy, government-mandated testing that is required under type approval. Self-certification also reduces regulatory costs and facilitates international trade because it allows manufacturers to quickly bring to market vehicles and equipment items that incorporate safety and technology advancements.

The Vehicle Safety Act requires the manufacturer to exercise ''reasonable care'' when issuing its certification. See 49 U.S.C. 30115. To this end, NHTSA encourages manufacturers to conduct tests in accordance with the tests specified in the FMVSS. See 49 CFR part 571.

(b) Noncompliance with a FMVSS or a Safety-Related Defect

Notwithstanding the certification of a product, a manufacturer may subsequently determine that a safety-related defect or a noncompliance with a FMVSS exists in a motor vehicle or a motor vehicle equipment item it has produced. Manufacturers have a duty to notify NHTSA if they learn the vehicle or equipment contains a defect and in good faith they decide that the defect is related to motor vehicle safety, or in good faith they decide that the vehicle or equipment does not comply with an applicable FMVSS. See 49 U.S.C. 30118(c). The manufacturer must notify NHTSA within five working days after determining the existence of a safety-related defect or noncompliance. See 49 CFR 573.6. Alternately, NHTSA may determine the existence of a safety-related defect or noncompliance in a particular motor vehicle or motor vehicle equipment item and order manufacturers to recall those items. See 49 U.S.C. 30118(b).

(c) Notification and Remedy for a Safety-Related Defect or Noncompliance

Regardless of whether the safety-related defect or noncompliance with an FMVSS is determined to exist by the manufacturer or by NHTSA, the manufacturer must provide NHTSA, as well as owners and dealers of the affected products, with notification of the defect or noncompliance and must remedy the defect or noncompliance, usually without charge. The notification and remedy process is commonly referred to as a ''safety recall campaign'' or more simply as a ''recall.'' There is a limited exception under which a manufacturer that has reported a noncompliance to NHTSA may petition the agency for a determination that the noncompliance is inconsequential as it relates to motor vehicle safety.[6] See 49 CFR part 556. NHTSA monitors the remedy program to ensure its successful completion. The agency is not authorized to expend its funds on recalls; the expense of notifying owners and providing a remedy must be borne by the manufacturer and/or importer of the products found to contain the defect or noncompliance. See 49 U.S.C. 30118–30120.

(d) Importers' Recall Obligations

Under the Vehicle Safety Act, importers of motor vehicles and motor vehicle equipment for resale are considered ''manufacturers.'' See 49 U.S.C. 30102(a)(5). Therefore, importers must recognize that they have obligations under the Vehicle Safety Act, which continue after motor vehicles or items of motor vehicle equipment are sold to consumers within the United States. If an importer becomes aware that a vehicle or equipment item it has imported contains a defect related to motor vehicle safety or does not comply with an applicable FMVSS, it must provide NHTSA, as well as owners and dealers of the affected vehicles or equipment, with notification of the defect or noncompliance and must remedy the defect or noncompliance, usually without charge. An importer also has notification and remedy responsibility if NHTSA determined the existence of the defect or noncompliance and ordered it to undertake a notification and remedy campaign.

If a fabricating manufacturer is not located in the United States and does not conduct business operations in this country, including through a subsidiary or other controlled entity, the U.S. judicial system likely will not be able to effectively compel the foreign

[5] In many countries, before motor vehicles or motor vehicle equipment items may be sold to consumers, the fabricating manufacturer must prove that these items comply with safety regulations and receive pre-approval from a government agency. This approach is commonly referred to as ''type approval.'' Under type approval, a manufacturer submits production samples and specifications to an approved laboratory and if the product complies with the standards, the government issues a type approval certificate of compliance. Because this can take many months, the manufacturer begins the process of obtaining type approval well in advance of bringing the product to market. After type approval is granted, the manufacturer ensures that each vehicle or equipment item is produced in conformance with the specifications that were submitted for approval. If countries enter into international agreements covering vehicle safety regulations, one country's type approval may be valid for another member country. For example, the Vehicle Certification Agency, an Executive Agency of the United Kingdom Department for Transport, administers type approval in the U.K. See: *http://www.vca.gov.uk/index.asp.*

[6] The National Traffic and Motor Vehicle Safety Act of 1966 gives NHTSA the authority to exempt manufacturers from the requirement to provide notification and remedy for safety-related defects or noncompliances if the agency determines that the defect or noncompliance is inconsequential as it relates to motor vehicle safety. See 49 U.S.C. 30118, 30120. The procedures for implementing this statutory authority are set forth in 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance.*

manufacturer to conduct a recall. In that case, the burden of providing notification to owners and dealers and a free remedy will fall solely upon the importer, unless the fabricating manufacturer voluntarily supports the recall.

(e) NHTSA Defect Investigations

In addition to the actions of the manufacturers and importers in recalling noncompliant and defective motor vehicles and motor vehicle equipment, NHTSA investigates suspected noncompliances and safety-related defects in motor vehicles and motor vehicle equipment items. Before initiating an investigation of a suspected safety-related defect, NHTSA ordinarily reviews consumer complaints that are submitted to the agency and other available information to determine whether a defect trend exists. Among the other information the agency reviews is Early Warning Reporting (EWR) information submitted by manufacturers under regulations issued pursuant to the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act of 2000. These regulations require manufacturers, including by definition, importers, to submit information that could assist the agency in determining whether a safety-related defect exists in a vehicle or in specified items of motor vehicle equipment. See 49 CFR part 579, subpart C. Under the EWR rules, manufacturers must generally report claims they receive on incidents resulting in fatalities or injuries allegedly caused by a defect in their vehicles or motor vehicle equipment items used in the United States or deaths allegedly caused by a defect in their identical or substantially similar vehicles or equipment used in a foreign country. Moreover, depending on the level of annual production and the type of product, manufacturers may also be required to provide NHTSA with information on production, property damage claims, consumer complaints, warranty claims, field reports, as well as other information.

(f) Compliance Needed to Import Motor Vehicles and Equipment

As part of its safety mandate, NHTSA monitors motor vehicles and items of motor vehicle equipment that are imported into the United States for compliance with applicable FMVSS. To be imported free of restriction, a motor vehicle less than 25 years old must be originally manufactured to comply with all applicable FMVSS and bear a label certifying such compliance that is permanently affixed by the vehicle's original (i.e. ''fabricating'') manufacturer. To be lawfully imported, a new or used item of motor vehicle equipment that is subject to an FMVSS must, as originally manufactured, conform to the standard and be so certified by its original manufacturer. See 49 U.S.C. 30112 and 30115. As noted above, items of motor vehicle equipment that are subject to the FMVSS include tires, rims, brake hoses, brake fluid, seat belt assemblies, lamps, reflective devices, and associated equipment, glazing (automotive glass and plastics), motorcycle helmets, child restraint systems (child safety seats), platform lift systems for the mobility impaired, rear impact guards for trailers, triangular reflective warning devices, and compressed natural gas containers. In most instances, the manufacturer's certification of compliance with the applicable FMVSS for regulated safety equipment is evidenced by the symbol ''DOT'' either inscribed on the equipment item in a prescribed location, or placed on the outside of the container in which the equipment item is shipped.

As previously noted, NHTSA has authority to investigate possible safety-related defects in a motor vehicle equipment item regardless of whether the item is subject to the FMVSS. When an item is subject to a FMVSS, compliance with the standard does not ensure that the item is free of a safety-related defect. NHTSA investigates numerous vehicles and items of equipment each year for possible defects.

(g) Procedural Requirements for Fabricating Manufacturers

Before offering a vehicle or motor vehicle equipment item for sale in the United States, the fabricating manufacturer must: (1) Designate a U.S. resident as its an agent for service of process if the manufacturer is not located in the United States (49 CFR part 551, Subpart D *Service of Process on Foreign Manufacturers and Importers*) and (2) submit to NHTSA identifying information on itself and the products it manufactures to the FMVSS, not later than 30 days after the manufacturing process begins (49 CFR part 566 *Manufacturer Identification*). The fabricating manufacturer of a motor vehicle must also submit to NHTSA information the agency will need to decipher the manufacturer's vehicle identification number or ''VIN'' format not later than 60 days prior to offering the first vehicle for sale in the United States (49 CFR part 565 *Vehicle Identification Number Requirements*). The manufacturer of certain regulated equipment items such as brake hoses, glazing (automotive glass and plastics), and tires must label its products with identification numbers assigned to the manufacturer by NHTSA.[7]

(h) Penalties

Manufacturers and importers may be subject to substantial civil penalties for failure to meet the requirements of the statutes and regulations that NHTSA administers. See 49 U.S.C. 30165. Currently, those penalties can be as high as $6,000 for each violation with a maximum of $16,375,000 for a related series of violations. See 49 CFR part 578.

(2) Exercise Great Care in Selecting Foreign Manufacturers

International trade presents unique risks. A company engaged in importing foreign manufactured goods or considering becoming an importer should have a complete and detailed business plan. The plan should reflect careful consideration of the following questions:

- Who will determine the specifications for the product?
- On what basis will the product specifications be developed?
- Who will design the product?
- Who will verify the product's design?
- What laboratory and field tests will be undertaken?
- Who will test product prototypes?
- What entity will fabricate various parts?
- What manufacturing quality control will be undertaken?
- How will manufacturing quality control be maintained?
- How often will products be tested to ensure continued compliance with the FMVSS?
- What documentation will be generated?
- What documentation will be maintained?
- Who will maintain the documentation?
- Who will check the documentation?

Compliance with FMVSS is only a part of the considerations. Motor vehicles operate in harsh conditions over many miles and some abuse must be assumed; therefore, avoidance of safety-related defects is critical.

Selecting a capable and responsible overseas business partner is one of the best ways to minimize risks. Before selecting a business partner in another country, it is wise to investigate the

[7] See 49 CFR 571.106, paragraph S5.2.2(b), relating to brake hoses; 49 CFR 571.205, paragraph S6.2, relating to glazing; and 49 CFR 574.5, relating to tires.

supplier's reputation using readily available public source information (such as the Internet) or, if possible, by interviewing other customers of the supplier. It is advisable for a prospective importer to check many references and not to limit its inquiries to references that the prospective supplier identifies. If the country in which a manufacturer is located has an established government agency to oversee product safety, that agency's public records may contain useful information on the company's history of recalls and regulatory compliance. Importers may also wish to consider requesting the potential supplier's catalogs and sample products for evaluation. The U.S. Department of Commerce also offers an *International Company Profile Report* that may assist importers in evaluating potential foreign partners. This report summarizes the financial strength of a company and provides useful information gleaned from the local press, industry contacts, and other sources. More information about this service is available on the Department of Commerce Web site. See *http://www.export.gov/salesandmarketing/ICP.asp.*

At a minimum, it is prudent for importers to use existing sources of information to ensure that they will purchase, import, distribute, and sell motor vehicles and motor vehicle equipment items subject to the FMVSS that are produced by foreign manufacturers who:

1. Properly identify themselves and their products to NHTSA (49 CFR part 566);
2. designate a U.S. resident as their agent for service of process (49 CFR part 551, subpart D);
3. furnish NHTSA with VIN-deciphering information (if they manufacture ''motor vehicles'') (49 CFR part 565); and
4. certify their products as complying with all applicable FMVSS and so label their products (49 U.S.C. 30115).

It would be advisable for the importer to focus on the specifications for and design of the product and the requirements of all applicable FMVSS covering the product that it wishes to import before beginning negotiations with a prospective overseas business partner. The importer should be well informed about U.S. import regulations and any FMVSS requirements that cover the products the importer intends to import. Before discussions take place with a prospective manufacturer, it may be worthwhile for the importer to have translated into the language used by that manufacturer the FMVSS that are applicable to the product and the agency regulations pertaining to manufacturers located outside the United States. It is reasonable to discuss with the prospective manufacturer at the outset the need for incorporating the requirements of the applicable FMVSS into the product's design because it is far less expensive to change the product's design in the planning stage than after the product is manufactured, when tooling must be changed or an expensive safety recall conducted. If the importer intends to have the manufacturer produce a replacement part for a motor vehicle, the part installed as original equipment may be used as a reference, keeping in mind the need to avoid infringing on any applicable patent.

The importer and manufacturer may wish to consider conducting a review of the product's design (a ''design review'') that involves examining the product's configuration, the materials used in its fabrication, and its labeling and packaging.[8] Importers without staff expertise and experience in design review may consider hiring a qualified consultant. It may be worthwhile for the design review to include a foreseeable use analysis,[9] which involves integrating safety into the product's design. An effective foreseeable use analysis may reveal substantial safety hazards that involve risks of injury or impairment of health that are related to the product's characteristics or deficiencies.

Apart from FMVSS, if any, that apply to the product, the importer may wish to measure the product's design against a known set of objectives for the product and compare the product's design to that of similar products produced by other manufacturers. When no FMVSS apply, it may also be sensible to measure the product's design against accepted product standards such as a set of voluntary industry standards, should one exist.[10] To find applicable standards, importers and manufacturers may wish to check the Web sites of standard-setting bodies for products of the type at issue, such as the Underwriters Laboratories Inc. (UL), American National Standards Institute (ANSI), American Welding Society (AWS), ASTM International (originally the American Society for Testing and Materials or ASTM), and the Society of Automotive Engineers, International. See: *http://www.sae.org.* Manufacturers of certain automotive replacement parts such as lighting equipment may wish to visit the Web site of the Certified Automotive Parts Association (CAPA) for more information about that organization's certification program. See *http://www.capacertified.org/home.asp.* These examples are not intended to be all-inclusive. It may be desirable for an importer to contact other standard-setting and certification organizations associated with the type of products it wishes to have manufactured, should such organizations exist.

Some manufacturers use other systematic analysis tools such as a Failure Modes and Effects Analysis (FMEA)[11] to identify potential safety hazards and to improve their products over time by reducing or eliminating failures. Using FMEA, failures can be prioritized according to how serious their consequences are, how frequently they may occur, and how easily they can be detected.[12]

It may be advisable to have parties with expertise in standards and regulations compliance, in-use durability, quality assurance, and customer service examine the results of the importer's product design review. Importers and manufacturers that do not have in-house expertise may consider using an accredited test laboratory to evaluate the safety of a product.[13]

Importers should consider creating records that identify changes in the product's design or in the production process and to incorporate changes that affect the product's use into the documents that accompany the product when sold. When changes are made to the product's design or to the production process, importers should obtain additional test data to assure the product continues to comply with stated technical specifications and with all applicable FMVSS. For traceability[14] or recall reasons, changed products can be identified by being marked or stamped with ''date'' or ''lot'' codes, or in another manner that distinguishes new products from old. It makes good sense to use current versions of the supporting technical documentation such as drawings; replacement parts data; instructions for the product's production, inspection, testing, and

[8] U.S. Consumer Product Safety Commission (CPSC), *''Handbook For Manufacturing Safer Consumer Products''* (Washington, DC, July 2006), p. 9. *http://www.cpsc.gov/businfo/intl/handbookenglishaug05.pdf.* **Note:** many of our suggestions are based on CPSC's Handbook, which provides a wealth of helpful ideas that are generally applicable to various types of manufacturing processes.

[9] Ibid, p. 10.

[10] Ibid, p. 26.

[11] The FMEA process was originally developed by the U.S. military in the 1940s. See: American Society for Quality, *http://www.asq.org/learn-about-quality/process-analysis-tools/overview/fmea.html.*

[12] CPSC, *Handbook,* p. 10.

[13] Ibid, p. 10.

[14] Ibid, p. 25.

repair; as well as operating handbooks, and to remove from use obsolete documents and data.[15]

(3) Inspect Foreign Manufacturing Facilities

Before entering into a written contract, we believe it is prudent for the U.S. importer to personally visit the supplier's facility and to determine whether the manufacturer is properly licensed by the appropriate government agencies. Several trips may be necessary to conduct an objective evaluation of the company, its factory, and its management. To reduce the potential for fraud, it is preferable to deal directly with the manufacturer and to avoid dealing with representatives (such as trade groups) that claim to represent a manufacturer. When dealing with a business partner of the manufacturer, it is generally advisable to determine whether the partner is a subsidiary of a larger company [16] and whether the importer has recourse against the parent company if the subsidiary defaults on its obligations. It may also be reasonable to hire a consultant if the importer has limited knowledge of, or experience with, the culture and trade practices of a foreign country.

While visiting a manufacturer's foreign facilities, the importer may consider asking the manufacturer's production managers to identify the quality control mechanisms that are in place (e.g., ISO 9000 series quality assurance compliance) and it may be helpful to observe whether there is evidence of good quality workmanship.

During the on-site visit, the importer should look for counterfeit commodities or evidence of trademark or copyright violations such as fraudulent seals made to look like those produced by certification organizations. While NHTSA does not have authority to enforce statutes that prohibit counterfeit products from being imported and the agency is aware that in some situations counterfeit products may, in fact, comply with applicable FMVSS, importers should avoid business dealings with known or suspected counterfeiters. Importers should be aware that many Federal departments and agencies are working with industry to stop the proliferation of counterfeit products.[17] Also assisting in these efforts are many independent organizations such as the U.S. Chamber of Commerce, which represents more than three million businesses.[18]

It is advisable to reach agreement with a prospective supplier on what constitutes substandard or defective products, and on who will be responsible for conducting recalls of products that have a safety-related defect or a noncompliance with a FMVSS. Of particular importance in this context are the importer's obligations under the Vehicle Safety Act to make determinations as to whether a product contains a safety-related defect or does not comply with a FMVSS. The importer should make clear to the foreign fabricating manufacturer that the importer makes the determination of a safety-related defect or noncompliance under U.S. law regardless of the fabricating manufacturer's views. The importer must recognize that its liability to conduct a recall when the facts so warrant under the Vehicle Safety Act is joint and several and the willingness of the foreign fabricating manufacturer to pay for all or some of the costs of the recall is not relevant. Nonetheless, the importer may wish to include provisions in the contract with the foreign fabricating manufacturer that covers contingencies, including recalls.

All aspects of the product's design and the production process may be considered for inclusion in the written contract, such as inspection and testing procedures and any documentation the importer requires, including work orders, operation sheets, inspection logs, repair logs, and test procedure checklists.[19] The contract may also specify under what circumstances the product's design may be changed (if at all), what equipment must be used for particular manufacturing operations, product traceability measures to be employed, and the types of forms to be used for recording quantitative data such as test readings. It is useful for the contract to specify exact terms of payment, performance standards, and timelines for deliveries and payments. Other arrangements that are reached between the importer and supplier should also be made in writing, such as those covering the importer's rights to visit the production facility in order to provide guidance and conduct product inspections.

The importer should obtain sound legal guidance before entering into an agreement. Following execution of the contract, it is wise to adhere to the contract provisions or risk the costs of a legal dispute in a foreign country. The importer should obey all laws and regulations of the foreign country and be wary of any offer by the partner to ignore or avoid those laws. Also, the importer may wish to become familiar with U.S. Department of Commerce, Bureau of Industry and Security (BIS) regulations relating to the transfer of dual use technology to certain foreign countries. U.S. statutes prohibit transfer of some sensitive technologies without a license. See *http://www.bis.doc.gov/2*.

It may be imprudent to assume that the overseas operations will run by themselves and visits to the foreign manufacturer on a frequent basis may be needed to evaluate the state of affairs. During these visits, the importer should, if possible, talk to employees to learn of any substitutions of materials, modifications of the product's design, and manufacturing problems that were encountered. The importer should verify that the manufacturer is complying with contractual requirements by inspecting the facilities, production operations, inspection and test records, supplies, and audit results. The importer should also ensure the product's continued compliance with the standards by having performed ongoing FMVSS compliance tests. This inspection and testing will provide feedback into the nature of the operation and is part of the importer's oversight of the operation and its quality assurance/quality control. The importer should not delay taking corrective action with the manufacturer when circumstances necessitate such action.[20]

(4) Inspect Goods Either Before They Are Exported to or Distributed in the United States

Different products, designs, and fabrication processes will require various levels of precision and accuracy of manufacturing equipment and tooling.[21] In all manufacturing processes, there is a need to monitor how well the products meet given specifications because products will deviate from specifications for reasons such as new tooling, aging machinery, and human error. Manufacturers of quality products use mathematical models for calibrating production

[15] Ibid, p. 24.

[16] For example, see U.S. Department of Commerce (DOC), ''Essential China Advice'' (Washington, DC, 2001–2008) *http://www.buyusa.gov/china/en/chinabiztips.html* (February 22, 2008).

[17] The Office of the U.S. Trade Representative and the Departments of Commerce, State, Justice, and Homeland Security lead a government-wide initiative, the Strategy Targeting Organized Piracy (STOP!), to fight billions of dollars in global trade in pirated and counterfeit goods that cheat American innovators and manufacturers, hurt the U.S. economy and endanger consumers worldwide. See: *http://www.stopfakes.gov* or call 1–866–999–HALT.

[18] The U.S. Chamber of Commerce sponsors the Coalition Against Counterfeiting and Piracy. See *http://www.thetruecosts.org/*.

[19] CPSC, *Handbook*, p. 28.

[20] Ibid, p. 10.

[21] Ibid, p. 28.

equipment, controlling the output of the manufacturing process, and auditing production processes to attain improvements. Therefore, importers may wish to carefully consider instituting a quality control program at the outset.

It would be wise for an importer to bear in mind that even though a product appears to be well manufactured, this does not necessarily mean that it also complies with applicable FMVSS and will not prove to be defective in actual use. While it is important to produce quality products, it is crucial that manufacturers test, on a continuing basis, their products to verify compliance with the FMVSS. To better shoulder the costs of any testing needed to assure compliance, smaller importers may wish to consider consortium purchasing, which would allow them to pool their resources.

To ensure that product requirements are within tolerances, it is sensible to collect product samples at predetermined intervals and inspect them for compliance with any specifications that are identified in advance. The purpose of the inspection is to ensure that the products safely perform their intended functions. Inspection procedures may include a visual examination, testing with appropriate instruments, measuring, or other forms of evaluation.[22] Manufacturers collect production samples for inspection based on mathematical models, which are beyond the scope of this notice, but that are critical to ensuring the quality of the end products. Test programs that are based on statistically sound sampling techniques will increase the probability that problems will be quickly identified and remedied before the products are shipped. Obviously, it is preferable from a cost perspective for nonconforming or substandard products to be discovered by the manufacturer before shipping costs are incurred.

It is generally expected that quality control issues will be greater within the first batch of products made by the new manufacturer. After the initial production run, the importer and manufacturer may want to conduct an inspection to determine whether the initial products function as intended, whether their dimensions are within tolerances, and whether their appearance is satisfactory. The importer and manufacturer may consider conducting comprehensive tests of representative products to ensure compliance with design specifications.

It is desirable to have an inspection plan to specify exactly what is to be inspected, how an inspection will be conducted and how often, and the types of gauges, tools, or instruments that will be used. If inspections are particularly critical to product safety, the inspection plan may require that they be performed by designated specialized or certified personnel.[23] It would be advisable to include inspection procedures in the contract and any changes should be mutually agreed upon so that a record of changes is maintained. We also suggest that the contract clearly state how the costs of quality control inspection and any need to redesign a product or process based on such inspections will be apportioned.

From the moment products leave the manufacturer until they are acquired by consumers, they are exposed to numerous contingencies that can affect their safety or usability. For these reasons, it is best not to terminate quality control measures at the port and the prudent importer might consider instituting quality control measures at storage locations and throughout the domestic distribution process. Distribution practices directly influence the safety of consumer products so it is wise to exercise control over packaging and shipping operations. This control includes the selection of adequate packaging materials, design of methods of packaging that preclude damage in shipment, and selection of shipping methods consistent with the physical properties of the product. Packaging and shipping techniques may need to be revised as experience dictates. In those instances where distributors are involved in assembly or test operations before delivery to the consumer it is wise to provide them with current and adequate assembly and test instructions and the importer may wish to ensure that these instructions are followed.[24]

When quality control problems are encountered, it may be useful to determine what has caused the problem and to collaborate with the manufacturer and participants in the distribution process to remediate the cause and prevent similar future problems. We believe it is wise to keep in mind that reputable manufacturers want to be apprised of problems and will work for compliance with the importer's requirements.

Developing and nurturing personal relationships with the business partner may be helpful and may pay dividends if problems are encountered.[25] To prevent potentially dangerous products from being delivered to consumers, it may be desirable for importers and manufacturers to discuss the need for prompt corrective actions and to agree on those in advance. These actions may include determining what caused the problem, how to prevent future problems, and the removal of problem products from the production and distribution channels before they reach consumers.[26] Locating products within the production and distribution system is crucial to preventing hazardous products from being delivered to consumers after safety-defects become apparent.

The importer might consider being prepared to provide the overseas partner with training and technical assistance to assure product quality.[27] This commitment to quality control may minimize defect costs and maintain profits by ensuring the end user's satisfaction, thereby enhancing the prospect for repeat business. On the other hand, neglecting oversight may result in compromised product quality and could possibly lead to legal consequences at home and abroad. It is worth noting that the foreign country's court system may not be relied on to offer a legal settlement consistent with U.S. practice.[28]

(5) Identify the Product's Country of Origin

It is generally required that an imported product be properly marked with its country of origin. The pertinent statute requires that, unless excepted, every article of foreign origin (or its container) imported into the United States must be marked with the article's country of origin. See section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304). The purpose of the marking requirement is to inform the ultimate purchaser in the United States of the country in which the imported article was produced.

Articles that are not marked at the time of importation with the English name of their country of origin may be subject to additional duties unless they are properly marked after importation, or are exported or destroyed under CBP supervision. CBP allows importers, where administratively practicable, to mark goods that are not marked at the time of importation, prior to their release from CBP's control or custody. This rule does not apply to an importer that has repeatedly violated the country of origin marking requirements after

[22] Ibid, p. 35.

[23] Ibid, p. 36.

[24] Ibid, p. 40.

[25] U.S. DOC, *Essential Advice*.

[26] CPSC, *Handbook*, p. 45.

[27] U.S. DOC, *Essential Advice*.

[28] Ibid.

receiving written notification from CBP that the goods are required to be marked prior to importation.

It is also important to keep in mind that any person who removes, destroys, alters, covers, or obliterates, with the intent of concealing, the country of origin marking on an imported article could be subject to criminal prosecution.[29]

(6) Establish a Consumer Service Program

It is wise for importers to establish and maintain an effective consumer service program because good service leads to satisfied customers and repeat business. An effective consumer service program may also assist the importer in quickly identifying quality control and safety-related problems and allow the importer to remedy those problems before they become widespread. Importers should consider establishing a consumer service program that includes the following elements:

(a) Consumer Education

An effective consumer service program will inform consumers using product manuals or instructions on how products are to be assembled, installed, and operated to prevent safety hazards. For example, NHTSA recommends that consumers read the instruction manual provided with a newly purchased child safety seat as well as the seat belt and child seat installation section of their vehicle owner's manual before attempting to install and use a child safety seat.

(b) Product Service

An effective consumer service program will make it easy for consumers to obtain replacement parts and will inform consumers how and where to take the product for servicing, particularly for deficiencies or malfunctions that are potential causes of safety hazards. Importers may consider providing a U.S. telephone number with the product for consumers to call if they have questions regarding the product.

(c) Recordkeeping

An effective consumer service program will include a records system that identifies a product by serial number, model, and date of manufacture and that identifies its location in the distribution system and after sale to a consumer. Importers should be aware that recordkeeping becomes very important for notifying consumers, retailers, and distributors of products when a safety recall is announced.

(d) Safety Recall Plan

An effective consumer service program will include a plan for the rapid recall of imported products from consumers, distributors, and dealers. The plan should include procedures to inform consumers how the importer will respond to safety defects or noncompliances with the FMVSS that are determined to exist in a product.[30] The recall plan should also establish procedures for notifying NHTSA about safety-related defects or noncompliances with the FMVSS, as required by agency regulations. The recall plan should be periodically evaluated and amended as necessary.

(e) Intervention

If a noncompliance or safety-related defect becomes apparent, an effective consumer service program will assist an importer in locating products within the production and distribution system and help to prevent problem products from being delivered to consumers.

(f) Notification

In the event of a recall, the most important factor is the ability to inform as many owners, dealers, retailers, and distributors of the product as possible. Notifying owners will be the importer's responsibility. While it may be impractical to maintain records identifying all retail purchasers of a particular consumer product, the importer may wish to make a reasonable effort in that direction by requesting distributors, dealers or retailers to maintain such records or by including with products self-addressed mailing cards for consumers to use, if they so choose, to register their ownership of the product.[31] Where it is a requirement to maintain records identifying retail purchasers of a product, such as is the case for tires and for motor vehicles, the importer must ensure that distributors, dealers, and retailers understand their obligations under existing regulations. For example, see 49 CFR part 574 *Tire Identification and Recordkeeping*.

(g) Business Process Monitoring

Other than complaints received directly from the importer's consumer service program, information that could assist in identifying safety-related defects or noncompliances with the FMVSS includes insurance claims, lawsuits, product return data from business partners, the results of ongoing quality assurance testing, and information about products that share common parts or platforms. The importer should also pay close attention to the EWR data it submits to NHTSA because that information may be very useful in identifying safety-related problems early in the product's history.

(7) Contact NHTSA Concerning Manufacturer/Importer Reporting Requirements, Safety Compliance, and Defect Issues

Enhanced product safety for imported motor vehicles and equipment will result from a collaborative effort between the importer community, manufacturers, and NHTSA. To this end, we offer the following agency contact numbers and Internet resources to help answer questions about these recommended best importer practices.

Office of Vehicle Safety Compliance

Topic	NHTSA Office/Internet	Telephone No.
General questions about importing vehicles and equipment items	Import and Certification Division	(202) 366–5291
General Importation Information	*http://www.nhtsa.dot.gov/cars/rules/import/*	
Questions about how a manufacturer informs NHTSA about its company and the products it manufactures.	Import and Certification Division	(202) 366–5291
Questions about how to provide NHTSA with the manufacturer's vehicle identification number deciphering information.	Import and Certification Division	(202) 366–5291

[29] U.S. Customs and Border Protection (CBP), ''*Marking of Country of Origin*'' (Washington, DC, December 2004) Publication # 0000–0539 *http://www.cbp.gov/xp/cgov/toolbox/publications/trade/* (February 22, 2008).

[30] CPSC, *Handbook*, p. 42.

[31] Ibid, p. 45.

Office of Vehicle Safety Compliance		
Topic	NHTSA Office/Internet	Telephone No.
Questions about NHTSA ID numbers that are assigned to equipment manufacturers of brake hoses, glazing (glass), and tires.	Equipment Division	(202) 366–5322
Information to Assist New Manufacturers	*http://www.nhtsa.dot.gov/cars/rules/maninfo/*	
Questions about FMVSS as they relate to equipment items (*i.e.*, tires, rims, brake hoses, brake fluid, seat belt assemblies, lighting equipment, glazing (automotive glass and plastics), motorcycle helmets, child restraint systems (child safety seats), platform lift systems for the mobility impaired, rear impact guards for trailers, triangular reflective warning devices, and compressed natural gas containers).	Equipment Division	(202) 366–5322
Federal motor vehicle safety standards (FMVSS)	*http://www.nhtsa.dot.gov/cars/rules/*	
NHTSA's Manufacturer Databases	www.nhtsa.dot.gov/cars/rules/manufacture	
Government Vehicle Safety Information	*http://www.safercar.gov/*	

Office of Defects Investigation		
Topic	NHTSA Office/Internet	Telephone No.
Questions about Early Warning Reporting (EWR)	Early Warning Division	(202) 366–4238
Early Warning Reporting	*http://www-odi.nhtsa.dot.gov/ewr/ewr.cfm*	
Questions about Defects and Recalls	Office of Defects Investigation	(202) 366–5210
Defects Investigations	*http://www-odi.nhtsa.dot.gov/*	

Office of Chief Counsel		
Topic	NHTSA Office/Internet	Telephone No.
Questions about how the statutes and regulations administered by NHTSA are interpreted.	Office of Chief Counsel	Requests for interpretations should be made in writing.
NHTSA Chief Counsel interpretive letters	*http://isearch.nhtsa.gov/*	
NHTSA Statutory Authorities	*http://www.nhtsa.dot.gov/nhtsa/Cfc_title49/index.html*	
NHTSA Regulations	*http://www.nhtsa.dot.gov/cars/rules/*	
Questions about how to designate a U.S. resident as an agent for service of process.	Office of Chief Counsel	(202) 366–1834.
Suggested Designation of Agent for Service of Process 49 CFR Part 551, Subpart D.	*http://www.nhtsa.dot.gov/cars/rules/manufacture/agent/customer.html*	

(8) General Assistance with Federal Regulations

The Office of Management and Budget, in conjunction with the U.S. Small Business Administration, publishes a one-stop Internet resource to make it easier for importers to understand Federal regulations, including those administered by NHTSA. The Web site provides a point of contact at each agency to answer specific questions.[32] See: *http://www.business.gov/contacts/federal/*. U.S. Customs and Border Protection (CBP), an agency of the U.S. Department of Homeland Security, has also published ''*Importing into the United States: A Guide for Commercial Importers*,'' which provides wide-ranging information about the importing process and import requirements. See: *http://www.cbp.gov/xp/cgov/toolbox/publications/trade/*.

Authority: E.O. 13439, 72 FR 40051.

Issued on: July 1, 2008.

Daniel C. Smith,

Associate Administrator for Enforcement.

[FR Doc. E8–15494 Filed 7–7–08; 8:45 am]

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[32] The Small Business Paperwork Relief Act of 2002 (SBPRA) requires each Federal agency to establish a point of contact to act as a liaison between the agency and small businesses. In addition, SBPRA requires the Office of Management and Budget (OMB), in conjunction with the Small Business Administration, to publish on the Internet a list of compliance assistance resources available at Federal agencies for small businesses.

DEPARTMENT OF THE TREASURY

Open Meeting of the Advisory Committee on the Auditing Profession

AGENCY: Office of the Undersecretary for Domestic Finance, Treasury.

ACTION: Notice of meeting.

SUMMARY: The Department of the Treasury's Advisory Committee on the Auditing Profession will convene a

meeting on Tuesday, July 22, 2008, in the Cash Room of the Main Department Building, 1500 Pennsylvania Avenue, NW., Washington, DC, beginning at 1 p.m. Eastern Time. The meeting will be open to the public.

DATES: The meeting will be held on Tuesday, July 22, 2008, at 1 p.m. Eastern Time.

ADDRESSES: The Advisory Committee will convene a meeting in the Cash Room of the Main Department Building, 1500 Pennsylvania Avenue, NW., Washington, DC. The public is invited to submit written statements with the Advisory Committee by any of the following methods:

Electronic Statements

• Use the Department's Internet submission form (*http://www.treas.gov/offices/domestic-finance/acap/comments*); or

Paper Statements

• Send paper statements in triplicate to Advisory Committee on the Auditing Profession, Office of Financial Institutions Policy, Room 1418, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

In general, the Department will post all statements on its Web site (*http://www.treas.gov/offices/domestic-finance/acap/comments*) without change, including any business or personal information provided such as names, addresses, e-mail addresses, or telephone numbers. The Department will also make such statements available for public inspection and copying in the Department's Library, Room 1428, Main Department Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect statements by telephoning (202) 622–0990. All statements, including attachments and other supporting materials, received are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Kristen E. Jaconi, Senior Policy Advisor to the Under Secretary for Domestic Finance, Department of the Treasury, Main Department Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, at (202) 927–6618.

SUPPLEMENTARY INFORMATION: In accordance with section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 2 and the regulations thereunder, David G. Nason, Designated Federal Officer of the Advisory Committee, has ordered publication of this notice that the Advisory Committee will convene a meeting on Tuesday, July 22, 2008, in the Cash Room in the Main Department Building, 1500 Pennsylvania Avenue, NW., Washington, DC, beginning at 1 p.m. Eastern Time. The meeting will be open to the public. Because the meeting will be held in a secured facility, members of the public who plan to attend the meeting must contact the Office of Domestic Finance, at (202) 622–4944, by 5 p.m. Eastern Time on July 18, 2008, to inform the Department of the desire to attend the meeting and to provide the information that will be required to facilitate entry into the Main Department Building. The agenda for this meeting consists of consideration of a second draft of the Advisory Committee's Final Report. Although the Department has endeavored to provide advance notice of at least fifteen days prior to this meeting, because of the July 4 holiday, publication of this notice may be delayed.

Dated: June 30, 2008.

Taiya Smith,

Executive Secretary.

[FR Doc. E8–15387 Filed 7–7–08; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 990–EZ

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 990–EZ, Short Form Return of Organization Exempt From Income Tax.

DATES: Written comments should be received on or before September 8, 2008, to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Carolyn N. Brown, (202) 622–6688, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the internet, at *Carolyn.N.Brown@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Short Form Return of Organization Exempt From Income Tax.

OMB Number: 1545–1150.

Form Number: 990–EZ.

Abstract: An annual return is required by Internal Revenue Code section 6033 for organizations exempt from income tax under Code section 501(a). Form 990–EZ is used by tax exempt organizations and nonexempt charitable trusts whose gross receipts are less than $100,000 and whose total assets at the end of the year are less than $250,000 to provide the IRS with the information required by Code section 6033. IRS uses the information from Form 990–EZ to ensure that tax exempt organizations are operating within the limitations of their tax exemption.

Current Actions: Form 990–EZ was modified to allow the use of new Schedules A, C, E, G, L and N of the 2008 Form 990. These schedules are used to report information currently required by the Form 990–EZ. A total of 481 line items, 123 code references and 766,003 responses were added to this form due to the new filing requirement and additional schedules.

Type of Review: Revision of a currently approved collection.

Affected Public: Not-for-profit institutions.

Estimated Number of Respondents: 412,315.

Estimated Time per Respondent: 105 hrs., 48 min.

Estimated Total Annual Burden Hours: 43,656,636.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will

be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 27, 2008.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E8–15462 Filed 7–7–08; 8:45 am]

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Federal Register

Tuesday,
July 8, 2008

Part II

Department of Energy

Federal Energy Regulatory Commission

18 CFR Part 37

Preventing Undue Discrimination and Preference in Transmission Service; Final Rule

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 37

[Docket Nos. RM05–17–003 and RM05–25–003; Order No. 890–B]

Preventing Undue Discrimination and Preference in Transmission Service

Issued June 23, 2008.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order on rehearing and clarification.

SUMMARY: The Federal Energy Regulatory Commission affirms its basic determinations in Order Nos. 890 and 890–A, granting rehearing and clarification regarding certain revisions to its regulations and the *pro forma* open-access transmission tariff, or OATT, adopted in Order Nos. 888 and 889 to ensure that transmission services are provided on a basis that is just, reasonable, and not unduly discriminatory. The reforms affirmed in this order are designed to: Strengthen the *pro forma* OATT to ensure that it achieves its original purpose of remedying undue discrimination; provide greater specificity to reduce opportunities for undue discrimination and facilitate the Commission's enforcement; and increase transparency in the rules applicable to planning and use of the transmission system.

DATES: *Effective Date:* This rule will become effective September 8, 2008.

FOR FURTHER INFORMATION CONTACT:

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

Order on Rehearing and Clarification

I. Introduction

1. On February 16, 2007, the Commission issued Order No. 890,[1] addressing and remedying opportunities for undue discrimination under the *pro forma* Open Access Transmission Tariff (OATT) adopted in Order No. 888.[2] The *pro forma* OATT was intended to foster greater competition in wholesale power markets by reducing barriers to entry in the provision of transmission service. In the ten years since Order No. 888, however, flaws in the *pro forma* OATT undermined its ability to realize the core objective of remedying undue discrimination. The Commission acted in Order No. 890 to correct these flaws by reforming the terms and conditions of the *pro forma* OATT in several critical areas, including the calculation of available transfer capability (ATC), the planning of transmission facilities, and the conditions of services offered by each transmission provider.

2. In Order No. 890–A, the Commission largely affirmed the reforms adopted in Order No. 890. The Commission noted that work was well underway to develop consistent practices governing the calculation of ATC in coordination with the North American Electric Reliability Corporation (NERC) and the North American Energy Standards Board (NAESB). When complete, the reliability standards developed through NERC and the business practices developed

[1] *Preventing Undue Discrimination and Preference in Transmission Service,* Order No. 890, 72 FR 12266 (March 15, 2007), FERC Stats. & Regs. ¶ 31,241 (2007) (Order No. 890), *order on reh'g,* Order No. 890–A, 73 FR 2984 (Jan. 16, 2008), FERC Stats. & Regs. ¶ 31,261 (2007) (Order No. 890–A).

[2] *Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities,* Order No. 888, 61 FR 21540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g,* Order No. 888–A, 62 FR 12274 (Mar. 14, 1997), FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g,* Order No. 888–B, 81 FERC ¶ 61,248 (1997), *order on reh'g,* Order No. 888–C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group* v. *FERC,* 225 F.3d 667 (D.C. Cir. 2000) (*TAPS* v. *FERC*), *aff'd sub nom. New York* v. *FERC,* 535 U.S. 1 (2002).

through NAESB will eliminate the broad discretion that transmission providers have in calculating ATC, increasing nondiscriminatory access to the grid and ensuring that customers are treated fairly in seeking alternative power supplies.

3. The Commission also noted the substantial resources that transmission providers have dedicated to the development of transmission planning processes in response to Order No. 890. Transmission planning is critical because it is the means by which customers consider and access new sources of energy and have an opportunity to explore the feasibility of non-transmission alternatives. It is therefore vital for each transmission provider to open its transmission planning process to customers, coordinate with customers regarding future system plans, and share necessary planning information with customers.

4. In addition, transmission providers have implemented new service options for long-term firm point-to-point customers and adopted modifications to other services. Instead of denying a long-term request for point-to-point service because as little as one hour of service is unavailable, transmission providers now consider their ability to offer a modified form of planning redispatch or a new conditional firm option to accommodate the request. This increases opportunities to efficiently utilize transmission by eliminating artificial barriers to use of the grid. Charges for energy and generation imbalances also have been standardized, including relaxed penalties for intermittent resources. This standardization reduces the potential for undue discrimination, increases transparency, and reduces confusion in the industry that resulted from the prior lack of consistency.

5. The Commission concluded that, taken together, these and other reforms adopted in Order No. 890 will better enable the *pro forma* OATT to achieve the core objective of remedying undue discrimination in the provision of transmission service. The Commission therefore rejected requests to eliminate, or substantially modify, the various reforms adopted in Order No. 890. The Commission did, however, grant rehearing and clarification regarding certain revisions to its regulations and the *pro forma* OATT.

Several petitioners have sought further rehearing and clarification of the Commission's determinations in Order No. 890–A.[3]

6. The Commission largely affirms the determinations reached in Order No. 890–A, granting limited rehearing and clarification to address certain specific matters raised by petitioners. Revisions to the *pro forma* OATT are required to implement several of these determinations, although none disturb the fundamental nature of the reforms adopted in Order No. 890. We therefore do not anticipate any difficulty in their implementation or disruption in on-going compliance efforts. We direct transmission providers that have not been approved as RTOs or ISOs, and whose facilities are not in the footprint of an RTO or ISO, to submit a Federal Power Act (FPA) section 206 filing that contains the revised non-rate terms and conditions of the *pro forma* OATT stated in Appendix B within 60 days of publication of this order in the **Federal Register.** We direct RTO and ISO transmission providers, transmission providers whose facilities are in the footprint of an RTO or ISO, and WSPP to submit an FPA section 206 filing that contains the revised non-rate terms and conditions of the *pro forma* OATT as stated in Appendix B within 90 days of publication of this order in the **Federal Register.**

II. Reforms of the OATT

A. Consistency and Transparency of ATC Calculations

7. In Order No. 890–A, the Commission affirmed its conclusion in Order No. 890 that the lack of consistency and transparency in the methodology for calculating ATC creates the potential for undue discrimination in the provision of open access transmission service. To remedy this lack of consistency and transparency, the Commission directed public utilities, working through the NERC reliability standards and NAESB business practices development processes, to produce workable solutions to implement ATC-related reforms adopted by the Commission. A number of petitioners seek rehearing and/or clarification regarding the Commission's ATC-related determinations in Order No. 890–A, which we address below.

1. Consistency

a. Necessary Degree of and Process To Achieve Consistency

8. The Commission affirmed the decision in Order No. 890 to require consistency of all ATC components[4] and certain definitions, data inputs, data exchange, and modeling assumptions in order to reduce the potential for undue discrimination in the provision of transmission service. In response to petitioner requests, the Commission clarified that adjacent transmission providers must coordinate and exchange data and assumptions to achieve consistent ATC values on either side of a single interface, regardless of whether they use the same or different ATC methodologies. The Commission also reiterated that its regulations require the posting of ATC values associated with a particular path, not available flowgate capacity (AFC) values associated with a flowgate. The Commission clarified, however, that a transmission provider is free to post both ATC and AFC values. The Commission further clarified that transmission-owning utilities in an RTO region can request waiver of the requirement to convert AFC calculations into ATC for posting purposes in the event the RTO has been granted such a waiver.

Requests for Rehearing and Clarification

9. Duke, EEI, and E.ON U.S. object to the requirement that ATC values be consistent on either side of an interface and suggest alternatively that transmission providers be required to achieve consistent TTC values on either side of the interface. Duke contends that achieving consistency in TTC values will not necessarily result in consistent ATC values. EEI agrees, arguing that ATC will be identical on both sides of an interface only in the unlikely event that the transmission providers each simultaneously receive and process corresponding transmission requests and schedules for the same type of product. EEI contends that transmission providers therefore will have to expend substantial effort and resources to constantly monitor and investigate differences in ATC values, the burden of which EEI argues outweighs any benefit realized.

10. Joined by E.ON U.S., Southern suggests that the Commission clarify that ''consistent ATC values'' does not mean that ATC or TTC values on either side of an interface must be identical. Southern argues that interpreting ''consistent'' to mean ''identical'' would be contrary to reliable planning and not reasonably achievable. Southern contends that there are a number of reasons why adjacent transmission

[3] A list of petitioners filing requests for rehearing and/or clarification is provided in Appendix A.

[4] The ATC components are total transfer capability (TTC), existing transmission commitments (ETC), capacity benefit margin (CBM), and transmission reserve margin (TRM).

providers may have varying ATC and TTC values on an interface, including partial path transmission service, CBM and TRM, and the impacts of multiple interfaces.

11. EEI and E.ON U.S. also request the Commission clarify that the process of achieving consistency of TTC values should occur through the ongoing NERC and NAESB processes. They argue that the Commission in Order No. 890 only required the consistency of components, definitions, data and assumptions with respect to ATC and its components, including TTC. They contend that the Commission did not require consistency in ATC values or provide for a means to reconcile differences in ATC calculations performed by multiple transmission providers. EEI and E.ON U.S. suggest that it may take additional time for NERC and NAESB to develop standards and business practices to achieve consistency in TTC values or reconcile differences between ATC values at common interfaces. Duke requests confirmation that compliance with the NERC and NAESB methodologies regarding TTC and related calculations, once they have been adopted and implemented, is sufficient to comply with the consistency requirement imposed in Order No. 890–A.

12. Entergy requests the Commission to clarify that Order No. 890–A was not intended to reverse the Commission's prior determination that Entergy and other transmission providers can rely on the scenario analyzer to satisfy the ATC posting requirements in part 37 of the Commission's regulations.[5] Although Entergy uses an AFC methodology, it posts ATC values on a path-specific basis by providing transmission customers a scenario analyzer tool that allows them to instantaneously evaluate transfer capability on a source-to-sink basis. Entergy states that its scenario analyzer is also relied on by other transmission providers, such as the Southwest Power Pool, Inc. and the Midwest Independent Transmission System Operator, Inc. Entergy states that the scenario analyzer will notify the customer the proposed request could be approved if sufficient AFC exists.

13. Entergy notes that the Commission has previously concluded that ''Entergy's AFC methodology meets the established minimum posting requirements for transmission capability set forth in Order No. 889,''[6] which Entergy argues were not changed in Order Nos. 890 or 890–A. If the Commission intended in Order No. 890–A to modify the requirements for posting ATC, or reverse its determination that the scenario analyzer complies with the posting requirements, Entergy requests clarification regarding what specific actions are required of transmission providers that rely on the AFC process. Entergy also asks that those transmission providers be allowed to continue using the scenario analyzer until those measures are in place. Entergy states that the sole purpose of the scenario analyzer has been to comply with the Commission's posting requirements and that transmission providers should not be required to maintain two different and duplicative systems for meeting those requirements.

14. E.ON U.S. requests clarification that all transmission-owning utilities within an RTO region can request waiver of the requirement to convert AFC calculations into ATC for posting purposes in the event the RTO has been granted such a waiver, and not just transmission-owning utilities that are members of the RTO. E.ON U.S. states that many of its neighboring systems utilize AFC instead of ATC, requiring it to calculate AFC in order to transact with the adjacent RTO members, to alleviate seams issues with these neighboring systems, and increase transparency for across the border transactions. E.ON U.S. contends that AFC calculations are much more accurate means to determine if capacity is available on a flowgate than are ATC calculations. If the Commission declines to grant the requested clarification, E.ON U.S. seeks rehearing on the grounds that the Commission is creating new seams where they do not currently exist by requiring transmission capacity to be calculated differently on both sides of the border for such transactions.

Commission Determination

15. The Commission affirms the clarification provided in Order No. 890–A that adjacent transmission providers must coordinate and exchange data and assumptions to achieve consistent ATC values on either side of a single interface.[7] We disagree with petitioners arguing that ''consistent'' ATC values should not be interpreted as identical. We recognize that factors such as timing of reservation requests, acceptances, and confirmations, and multiple interfaces between and among transmission providers, can make it difficult to achieve coincidental, identical postings of ATC values on both sides of an interface. However, as the Commission explained in Order No. 890, if all of the ATC components and certain data inputs and assumptions are consistent, the ATC calculation methodologies being finalized by NERC through the reliability standards development process should produce predictable and sufficiently accurate, consistent, equivalent, and replicable results.[8] We therefore disagree that the directive to coordinate and exchange data and assumptions to achieve consistent ATC values on either side of an interface was newly imposed in Order No. 890–A. The Commission simply clarified that the requirement stated in Order No. 890 applies equally to calculations of ATC on either side of an interface.

16. Public utilities have already been directed to work through the NERC and NAESB processes to achieve such consistency in ATC and TTC values. In response to Duke, the Commission will address whether the resulting reliability standards and business practices adequately satisfy this consistency requirement on review of those reliability standards and business practices. We note that public utilities were recently granted an extension of time to finalize their work through the NERC and NAESB processes. In Order No. 890, the Commission directed each transmission provider to file a revised Attachment C to its OATT to incorporate any changes associated with the revised reliability standards and business practices within 60 days of completion of the NERC and NAESB processes. We clarify that these revised Attachment C filings are due 60 days after the date on which the relevant reliability standards or business practices takes effect, not their submission for Commission review.

17. We grant the clarification requested by Entergy regarding the Commission's February 11, 2004 determination that Entergy's AFC methodology meets the minimum posting requirements for transmission capability set forth in Order No. 889.[9] The Commission did not amend in Order Nos. 890 or 890–A the obligation for transmission providers to post ATC values associated with a particular path instead of AFC values associated with a flowgate.[10] Prior determinations by the Commission that a particular practice satisfies that obligation, or waiving that

[5] *Citing Entergy Servs., Inc.,* 106 FERC ¶ 61,115 (2004); 18 CFR 37.6(b)(2)(i) (2007).

[6] *See Entergy Servs., Inc.,* 106 FERC ¶ 61,115 at P 50.

[7] *See* Order No. 890–A at P 52.

[8] *See* Order No. 890 at P 210.

[9] *See Entergy Servs., Inc.,* 106 FERC ¶ 61,115 at P 50.

[10] *See* 18 CFR 37.6(b)(1)(i); *see also* Order No. 890 at P 211; Order No. 890–A at P 51.

obligation altogether, therefore remain intact.[11]

18. We disagree with E.ON U.S. that non-member transmission-owning utilities within an RTO region are similarly situated to member transmission-owning utilities, which the Commission noted in Order No. 890–A may request waiver of the requirement to convert AFC calculations into ATC for posting purposes in the event the RTO has been granted such a waiver. RTO members that have retained control over certain transmission facilities operate those transmission facilities in coordination with the RTO. In comparison, non-RTO members provide transmission service independently and, therefore, for purposes of ATC calculation are similar to a transmission provider outside the RTO region. Nevertheless, we reiterate that a transmission provider is free to post both ATC and AFC values if it believes such postings provide additional transparency.[12]

b. ATC Components—CBM and TRM

19. In Order No. 890–A, the Commission affirmed the decision in Order No. 890 to require public utilities, working through NERC and NAESB, to develop clear standards and business practices for how the CBM value is determined, allocated across transmission paths and flowgates, and used. The Commission also affirmed the requirement that transmission providers design their transmission charges so that the class of customers not benefiting from the CBM set-aside, *i.e.*, point-to-point customers, does not pay a transmission charge that includes the cost of the CBM set-aside. The Commission explained that only network customers and the transmission provider on behalf of its native load may request that transmission capacity be set aside as CBM and, therefore, only those users of the system should bear its costs. The Commission also rejected requests to use CBM for reserve-sharing arrangements, reiterating that TRM is the appropriate category for reserve-sharing.

Requests for Rehearing and Clarification

20. Southern requests rehearing of the Commission's statement that non-firm point-to-point transmission customers only receive an indirect benefit from CBM. Southern contends that under normal conditions without generation deficiencies, non-firm point-to-point customers may use CBM set-aside capacity. Southern states that it has not called upon CBM to meet a generation deficit emergency in six years, resulting in that capacity consistently being made available to non-firm customers. Southern argues that non-firm customers therefore directly benefit from CBM and should bear transmission charges that include the cost of the capacity they are actually utilizing. If the Commission does not wish to make a generic determination, Southern asks the Commission to clarify that the issue of whether non-firm customers benefit from CBM will be addressed on a case-by-case basis.

21. TDU Systems request clarification of the Commission's statement in Order No. 890–A that TRM is the appropriate category for reserve sharing arrangements. TDU Systems request confirmation that, if a transmission provider is using another form of set-aside for reserve sharing purposes, such as CBM, the transmission providers' customers are entitled to comparable use of the form of set-aside. TDU Systems argue that comparability cannot be achieved where the transmission provider does not offer use of transmission capacity set-asides to LSE customers comparable to the use that the transmission provider allows itself.

Commission Determination

22. The Commission affirms the requirement adopted in Order No. 890, and affirmed in Order No. 890–A, that transmission providers design their transmission charges so that the class of customers not benefiting from the CBM set-aside, *i.e.*, point-to-point customers, does not pay a transmission charge that includes the cost of the CBM set-aside.[13] We disagree with Southern that non-firm customers benefit directly from the CBM set-aside. The Commission acknowledged in Order No. 890–A that capacity set aside for CBM may be made available to non-firm customers when not otherwise in use.[14] That benefit, however, is indirect and inferior to the direct benefits enjoyed by those entities that have the exclusive right to request the set-aside in the first instance.

23. The Commission acknowledged in Order No. 890–A that use of capacity set aside for CBM by non-firm customers may result in revenues that are credited to the transmission provider's cost of service, to the benefit of point-to-point customers.[15] The Commission stated its expectation that transmission providers would address in rate design filings any possibility for particular customers to receive an inappropriate credit for non-firm use of capacity set aside for CBM. Further clarification is unnecessary.

24. With regard to reserve sharing arrangements, the Commission clearly stated in Order No. 890–A that TRM is the appropriate category for reserve sharing arrangements and that, in comparison, CBM is used to meet generation reliability criteria in times of emergency generation deficiencies.[16] Therefore, transmission providers must use TRM, not CBM, for reserve sharing arrangements and make ATC set aside for that purpose available to all LSEs on a comparable basis for any reserve sharing arrangements they may have.

2. Transparency

25. In Order No. 890–A, the Commission clarified that all data used to calculate ATC and TTC for any constrained paths and any system planning studies or specific network impact studies performed for customers are to be made available on request, regardless of whether the customer is non-affiliated or affiliated with the transmission provider. The Commission also clarified that underlying load forecast assumptions to be posted on OASIS should include economic and weather-related assumptions. The Commission concluded that posting load forecast and actual load data on a control area and LSE level does not raise serious competitive implications. The Commission stated that it would consider requests for exemption from this posting requirement on a case-by-case basis if there is customer-specific information deemed confidential by the affected customer that impedes the ability of the transmission provider to post this data.[17]

26. The Commission further clarified that transmission providers must make available, upon request and subject to appropriate confidentiality protections and CEII requirements, certain modeling data including load flow base cases and generation dispatch methodology and, subject to additional reasonable and applicable generator confidentiality limitations, production cost models (including assumptions, settings, study results, input data, etc.). The Commission declined to require transmission providers to post this information on OASIS.

Requests for Rehearing and Clarification

27. Duke seeks clarification of the requirement to post information requested by an affiliate when that information is already available to the

[11] *See* Order No. 890–A at P 36.

[12] *See* Order No. 890–A at P 51.

[13] *See* Order No. 890 at P 263; Order No. 890–A at P 86.

[14] *See* Order No. 890–A at P 87.

[15] *Id.*

[16] *Id.* P 85.

[17] *Id.* P 143.

public. Duke suggests that only a notice that an affiliate requested a publicly-available study needs to be posted, and not the actual study, because the additional effort of posting the actual study would be redundant, burdensome, and without purpose.

28. Duke, EEI and Southern request rehearing to eliminate the requirement to post the underlying assumptions used to develop load forecasts on a daily basis, including economic and weather-related assumptions. They claim that the requirement is a substantial modification of regulations adopted in Order No. 890, is unduly burdensome, and may cause transmission providers to violate their contractual obligations by releasing proprietary assumptions and forecasts obtained from forecasting service providers. Southern also complains that it is unclear what is meant by ''economic assumptions'' and any requirement to provide daily updates of such assumptions would be unduly burdensome given the amount of effort required and negligible benefit that customers might gain from the information.

29. Duke argues that the Commission's expansion of posting requirements to include load forecast assumptions daily is an entirely new requirement for which notice and comment has not been provided. Duke contends that Constellation's request for rehearing of Order No. 890 mentioning load forecast assumptions was inadequate to provide notice because Constellation did not request that load forecast assumptions be posted on a daily basis or that load forecast assumptions unrelated to ATC calculations be posted.

30. If the Commission declines to eliminate this posting requirement, Duke suggests that it be amended to require a one-time (*i.e.*, not daily) posting of a list of factors that go into the peak load forecast, such as day of the week, a day's status as holiday or non-holiday, temperature, dew point, precipitation forecast, *etc.* If the Commission continues to require the daily posting of information, Duke seeks clarification regarding the granularity of such information given that it could vary widely over a control area. Duke questions whether, for example, PJM would have to post weather forecasts for each of its subregions. Until the Commission grants the requested clarification, Duke argues that the posting requirement should be waived or transmission providers should be permitted to satisfy the requirement by reference to commercial/government weather websites.

31. Southern seeks clarification of the requirement to make available, on request, the modeling data identified in paragraph 148 of Order No. 890–A. Southern states that it does not use all of the specified modeling data to calculate ATC, TTC, CBM and/or TRM. In particular, Southern argues that neither production cost models nor special protection systems and operation guides are used in its ATC calculations and that production cost models in particular are not even maintained by its transmission function given its highly sensitive nature. Southern asks the Commission to clarify that transmission providers are required to provide only the specified modeling data actually used in performing those calculations and that a transmission provider is not required to manufacture and/or produce the data in the event it does not use a particular input in its ATC calculations.

32. Duke also argues that production cost models and generation dispatch methodologies typically contain commercially sensitive or proprietary information or information that should not be released to the public. Duke acknowledges that the Commission stated that availability of production cost models would be subject to reasonable and applicable generator confidentiality limitations,[18] but argues that still would allow employees or consultants of competing entities to be provided access to sensitive data. Duke therefore asks the Commission to confirm that reasonable and applicable generator confidentiality limitations means that the proprietary/sensitive information may be released only to transmission function personnel that are restricted from further disclosure, including to their own merchant functions. Duke also requests clarification that the transmission provider's merchant/generation function and third-parties are to be treated identically as to their right to classify which information that they have given to a transmission provider is proprietary/sensitive, in accordance with Commission policies.

Commission Determination

33. The Commission clarifies in response to Duke that, when an affiliate requests information that is already available to the public, the transmission provider need only post a notice that an affiliate requested the particular information, not the actual information. This clarification applies, however, only to those instances in which the actual information is already publicly available.

34. We affirm the requirement that each transmission provider post on a daily basis its load forecast, including underlying assumptions, and actual daily peak load for the prior day.[19] In the NOPR, the Commission specifically raised the possibility of requiring transmission providers to make available their underlying load forecast assumptions for all ATC calculations.[20] The Commission adopted that proposal in Order No. 890, but failed to amend its regulations accordingly.[21] The Commission corrected that oversight in Order No. 890–A.[22] We therefore disagree with Duke that transmission providers were not on notice that posting of load forecast data and related assumptions might be required.

35. We clarify, however, that the Commission intended for transmission providers to post the underlying factors used to make load forecasts that have a significant impact on calculations, such as temperature forecasts, not all economic and other data that underlies each and every daily load forecast. Transmission providers must post a description of their load forecast method including how economic and weather assumptions are used in load forecasting. The Commission's intent is to increase transparency in the transmission provider's process of forecasting, providing assurance to customers that loads are consistently being forecast using methodologies which are not subject to daily manipulation to favor affiliates.

36. We also affirm the requirement to make available, upon request and subject to appropriate confidentiality protections and CEII requirements, certain modeling data including load flow base cases and generation dispatch methodology and, subject to additional reasonable and applicable generator confidentiality limitations, production cost models (including assumptions, settings, study results, input data, *etc.*).[23] We clarify in response to Southern that a transmission provider is not required under Order Nos. 890 or 890–A to manufacture or otherwise make available modeling data that it does not use in its ATC calculations. However, if the specified modeling data are used for the calculation of ATC, or any of its components, they must be

[18] *Citing* Order No. 890–A at P 148.

[19] 18 CFR 37.6(b)(3)(iv) (2007).

[20] *See Preventing Undue Discrimination and Preference in Transmission Services,* Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,603, at P 194 (2006) (NOPR).

[21] *See* Order No. 890 at P 416.

[22] *See* Order No. 890–A at P 143.

[23] *See* Order No. 890–A at P 148.

made available as required in Order No. 890–A.

37. We agree with Duke that production cost models and generation dispatch methodologies may contain commercially sensitive or proprietary information. Transmission providers are therefore permitted to condition the release of such information on appropriate confidentiality restrictions. With regard to production costs models, reasonable applicable generator confidentiality limitations could include, among other things, restrictions on the release of proprietary and commercially sensitive information to those engaged in the marketing, sale, or purchase of electric power at wholesale. We agree that the transmission provider's merchant and/or generation personnel and third-parties are to be treated identically as to their right to classify proprietary or commercially sensitive information that they provide to a transmission provider, as well as their right to receive such data from the transmission provider.

B. Transmission Pricing

1. Energy and Generation Imbalances

a. Generator Imbalance Penalties

38. In Order No. 890–A, the Commission affirmed the decision in Order No. 890 to adopt standardized generator imbalance provisions in Schedule 9 of the *pro forma* OATT. The Commission clarified that a transmission provider only has to provide generator imbalance service from its own resources to the extent that it is physically feasible to do so (*i.e.*, the transmission provider is able to manage the additional potential imbalances without compromising reliability). Each transmission provider may state on its OASIS the maximum amount of generator imbalance service that it is able to offer from its resources based on an analysis of the physical characteristics of its system. Alternatively, a transmission provider may consider requests for generator imbalance service on a case-by-case basis, performing as necessary a system impact study to determine the precise amount of additional generation it can accommodate and still reliably respond to the imbalances that could occur.

39. The Commission clarified that neither of these options relieves the transmission provider of its obligation to provide generator imbalance service if it is able to acquire additional resources to do so. If it is not physically feasible for the transmission provider to offer generator imbalance service using its own resources, either because they do not exist or they are fully subscribed, the transmission provider must attempt to procure alternatives to provide the service, taking appropriate steps to offer an option that customers can use to satisfy their obligation to acquire generator imbalance service as a condition of taking transmission service. If no such resources are available, the transmission provider must accept the use of dynamic scheduling to the extent a transmission customer has negotiated an appropriate arrangement with a neighboring control area.

Request for Clarification

40. E.ON U.S. seeks clarification of the time frame within which the transmission provider must post the availability of service (*e.g.*, an hourly, 24-hour, or monthly interval). E.ON U.S. also asks the Commission to clarify the time frame required for obtaining imbalance service from other sources and the extent to which a transmission provider is obligated to seek such resources. E.ON U.S. suggests that this obligation could be interpreted as requiring only a single search or a constant search for resources over a long period of time. E.ON U.S. seeks further clarification regarding the point in the process when the transmission provider must inform the generator that it must arrange for dynamic scheduling because no other option is available.

Commission Determination

41. The Commission affirms the decision in Order No. 890–A to allow a transmission provider to post on its OASIS the maximum amount of generator imbalance service it is able to offer without impairing reliability.[24] To the extent necessary, we clarify that a transmission provider must post the availability of generator imbalance service and seek imbalance service from other sources in a manner that is reasonable in light of the transmission provider's operations and the needs of its imbalance customers. What is reasonable for some imbalance customers and transmission providers may be unreasonable for others. We therefore decline to set a specific time frame within which the transmission provider must post the availability of generator imbalance service. For the same reason, we decline to set a generic time frame for obtaining imbalance service from other sources in the event it is not physically feasible to offer generator imbalance service using the transmission provider's resources.

42. In the event that there are no additional resources available to enable the transmission provider to meet its obligation to provide generator imbalance service, the transmission provider must accept the use of dynamic scheduling by a transmission customer.[25] The transmission provider cannot, however, require the use of dynamic scheduling, since the customer may choose to make other alternative comparable arrangements to self supply generator imbalance service. If a customer chooses to use dynamic scheduling in this circumstance, it is the option and the responsibility of the transmission customer to seek out and appropriately negotiate dynamic scheduling with a neighboring control area. The transmission provider is required to accommodate the use of dynamic scheduling only to the extent the transmission provider is unable to provide generator imbalance service and the customer has negotiated appropriate arrangements with the relevant control areas.

b. Definition of Incremental Cost

43. In Order No. 890–A, the Commission granted rehearing of its decision to calculate incremental costs for the purpose of assessing imbalance charges based on the last 10 MW dispatched to supply the transmission provider's native load. The Commission determined that it is more reasonable to base imbalance charges on the actual cost to correct the imbalance, which may be different than the cost of serving native load. Accordingly, the Commission modified the definition to require transmission providers to use the cost of the last 10 MWs dispatched for any purpose, *i.e.*, to serve native load, correct imbalances, or to make an off-system sale.

Requests for Rehearing and Clarification

44. EEI and Southern argue that the Commission mistakenly used ''*i.e.*'' instead of ''*e.g.*'' when referring to the costs to be included in the calculation of charges for energy imbalance service and generator imbalance service. EEI contends that the specified purposes exclude costs to serve other customers, such as on-system customers who take partial requirements service from the transmission provider. EEI asks the Commission to clarify that it meant to use ''*e.g.*'' to indicate that the list of examples provided were non-exclusive. Southern similarly requests that Schedules 4 and 9 of the *pro forma* OATT be revised to use ''*e.g.*'' instead of ''*i.e.*''

[24] Order No. 890–A at P 289.

[25] *Id.* P 290.

Commission Determination

45. The Commission grants rehearing of the definition of incremental cost as described in the preamble of Order No. 890–A and in Schedules 4 and 9 of the *pro forma* OATT. Those schedules define incremental cost and decremental cost as ''the Transmission Provider's actual average hourly cost of the last 10 MW dispatched for any purpose.'' [26] We agree that use of the term ''*e.g.*'' instead of ''*i.e.*'' when referring to the types of energy to be included in the incremental cost calculation better reflects the Commission's intent to include within that calculation the last 10 MW dispatched for any purpose. We revise the *pro forma* OATT accordingly.[27]

2. Credits for Network Customers

46. In Order No. 890–A, the Commission affirmed its decision in Order No. 890 to sever the link in the *pro forma* OATT between joint planning and credits for new facilities owned by network customers. As the Commission explained in Order No. 890, the linkage between credits and joint planning gave the transmission provider an incentive to deny coordinated planning to avoid granting credits for customer-owned facilities. The Commission concluded that any efficiencies that may be lost by severing that link should be offset by the increased efficiencies resulting from the coordinated planning reforms adopted in Order No. 890, which the Commission noted will ensure that most, if not all, transmission facilities are planned on a coordinated basis.

47. The Commission similarly affirmed the decision to adopt a revised test to determine whether a network customer is eligible to receive credits for new facilities. Under the revised section 30.9 of the *pro forma* OATT, customers are eligible for credits for those facilities that are integrated with the operations of the transmission provider's facilities; provided, that integration will be presumed for customer-owned facilities that, if owned by the transmission provider, would be eligible for inclusion in the transmission provider's annual transmission revenue requirement as specified in Attachment H of the *pro forma* OATT. The Commission clarified in Order No. 890 that this revision did not alter the underlying integration standard. In order to satisfy the integration standard, the customer must show that its new facility is integrated with the transmission provider's system, provides additional benefits to the transmission grid in terms of capability and reliability, and can be relied on by the transmission provider for the coordinated operation of the grid.[28]

48. The Commission explained in Order No. 890–A that adoption of the presumption of credits in section 30.9 was necessary to ensure comparability between network customers and transmission providers serving load. To that end, the Commission clarified that the presumption of integration is rebuttable as applied to both the transmission provider and the network customer. A transmission provider may challenge the presumption that the customer's facilities are integrated by showing that the customer's facilities do not actually meet the integration standard, notwithstanding the fact that they are similar to facilities in the transmission provider's rate base. Similarly, a customer could challenge the presumption that a transmission provider's facilities are integrated by showing that the facilities, for example, do not provide network benefits. As a result, the Commission clarified that denial of credits for a network customer no longer triggers a need for the transmission provider to demonstrate that its own facilities satisfy the integration standard.

Requests for Clarification and Rehearing

49. NRECA and TAPS ask the Commission to clarify whether it intended to apply a single integration standard to both transmission customer and transmission provider facilities and, if so, what standard will apply. These petitioners contend that several passages in Order No. 890–A suggest that the Commission will now apply a single integration standard, no matter whose facilities are under consideration. They note, for example, the Commission's statement in paragraph 353 of Order No. 890–A that ''[a] transmission provider may overcome the network customer's presumed integration by demonstrating, with reference to its own facilities that meet the integration standard, that the network customer's facilities do not meet the standard.'' [29] They point to another statement that it is ''appropriate for both the transmission provider and its customers to be subject to the integration standard to the extent the presumption of integration is overcome.'' [30] These petitioners express concern, however, regarding the Commission's statement that the integration standard for credits under section 30.9 remains unchanged and that precedents applying that standard will continue to apply. They argue that those precedents establish and apply a significantly more stringent test for integration of customer-owned facilities than for facilities of the transmission provider.[31]

50. TAPS suggests that the Commission's new policy for new transmission facilities must mean one of three things. Its first and preferred possibility is that, in assessing whether the new integration presumption has been overcome, the Commission will apply a single integration standard to both the transmission provider and the transmission customer, *i.e.*, the relaxed standard that has long applied in determining whether a transmission provider's facilities should be rolled into its rate base. Under a second possibility, a single integration standard also would apply, but transmission providers would be held to the same strict integration standard to which transmission customers seeking section 30.9 credits have long been subject. As a final interpretation, TAPS states that, to overcome the presumption applicable to new transmission facilities, the Commission could continue to apply two different tests: The more stringent one applicable to customers seeking credits and the more relaxed one for transmission providers to include facilities in rate base. TAPS notes, however, that this would be inconsistent with Order No. 890–A's repeated references to a single, comparable integration standard that applies to both customer and transmission providers.

51. East Texas Cooperatives agree that the case law establishes a different and harder test for integration of customer-owned facilities. East Texas Cooperatives state that, under that precedent, a transmission provider needs only to run the load flow study used in ETEC to challenge credits for a customer-owned facility. East Texas Cooperatives argue that this load flow study cannot be satisfied by any transmission facilities, since it takes out both customer facilities and load and asks if the grid can still run reliably. In comparison, East Texas Cooperatives

[26] Schedules 4, 9 of the *pro forma* OATT.

[27] We note in response to EEI, however, that the existing reference to native load in Schedules 4 and 9 already includes on-system customers taking requirements service under section 1.23 of the *pro forma* OATT.

[28] Order No. 890 at P 754, n. 436 (citing *Southwest Power Pool, Inc.,* 108 FERC ¶ 61,078 (2004), *reh'g denied,* 114 FERC ¶ 61,028 (2006)).

[29] Order No. 890–A at P 353.

[30] *Id.* P 354.

[31] *Citing East Texas Elec. Coop., Inc.* v. *Central & South West Services, Inc.* 108 FERC ¶ 61,079 (2004), *reh'g denied,* 114 FERC ¶ 61,027 (2006) (ETEC); *Northeast Tex. Elec. Coop., Inc.,* 108 FERC ¶ 61,108, at P 48 (2004), *reh'g denied,* 111 FERC ¶ 61,189 (2005) (NTEC).

contend that the cost of transmission provider facilities would continue to be presumptively rolled in subject to challenge unless a party can show that those facilities are so isolated from the grid that they are and will likely remain non-integrated and thus provide no benefit to the system.

52. East Texas Cooperatives therefore argue that the Commission's statement in Order No. 890–A regarding the continued applicability of integration precedent mandates discrimination in favor of transmission provider facilities in violation of the FPA. They contend that eligibility for rolled-in rate treatment of the same facilities would vary solely as a result of their ownership, since customer-owned facilities that are found not to be integrated under a load flow integration test would become integrated if purchased by the transmission provider, which is subject to a more relaxed application of the integration standard. East Texas Cooperatives suggest that the Commission justified its application of a more difficult test to network customers on a presumption that the customer-owned facilities are less integrated than transmission provider facilities. Joined by NRECA and TAPS, East Texas Cooperatives argue that customer-owned facilities are built to serve customer loads just as transmission provider facilities are built to serve transmission provider loads. These petitioners contend that there is no basis in the record for presuming that transmission provider facilities are more integrated than customer facilities.

53. FMPA, NRECA and TDU Systems contend that contradictory statements in Order No. 890–A could be read to apply the more stringent integration standard to customer-owned facilities and a more relaxed integration standard for transmission provider facilities.[32] In particular, these petitioners question what standard the Commission was referring to in paragraph 353 of Order No. 890–A when it stated that the transmission provider may overcome the network customer's presumed integration by demonstrating, with reference to its own facilities that meet the integration standard, that the network customer's new facilities do not meet the standard, *i.e.*, the ''integration standard'' or the ''similar in purpose and design'' standard. NRECA and TDU Systems argue that the appropriate standard to apply when both claiming and rebutting the presumption of integration is whether the customer's facilities are similar in design and purpose to those of the transmission provider that are in rates.

54. Florida Power also requests clarification of language in paragraph 353 of Order No. 890–A. Florida Power asks the Commission to confirm that this statement applies only to determine whether the customer is entitled to the presumption in the first place, not to rebut of the presumption once established, and that the standard to which the Commission was referring is whether the customer-owned facilities are similar in design and purpose to facilities owned by the transmission provider that are included in rates. Florida Power also asks the Commission to confirm that the transmission provider could oppose a customer's initial attempt to establish a presumption of credits by showing, by reference to the transmission provider's own facilities that meet the integration standard, that the customer-owned facilities are not similar in design and purpose to facilities owned by the transmission provider that are included in rates.

55. With regard to rebutting the presumption once established, Florida Power requests confirmation that the transmission provider can overcome the presumption by showing that the customer-owned facilities do not meet the integration standard, *i.e.*, that it does not need the network customer's facility to serve the network customer, the transmission provider's other transmission customers, or the transmission provider's retail customers.[33] Florida Power contends that it would not be just and reasonable, or consistent with the cost causation principle, to shift the cost of customer-owned facilities if those facilities do not benefit the transmission provider's system.

56. E.ON U.S. argues that the rebuttable presumption of integration should apply only to customer-owned facilities that are planned through the Attachment K or similar process. If the Commission's expectation that most, if not all, transmission upgrades eligible for credits will be planned in the Attachment K process is true, E.ON U.S. suggests that the rebuttable presumption of integration most reasonably applies only to facilities planned through that process.[34] E.ON U.S. contends that linking credits for customer-owned facilities to the Attachment K planning process would allow the transmission provider an opportunity to coordinate with customers on facilities, while preventing any opportunities for undue discrimination given the non-discretionary nature of the planning obligation. E.ON U.S. argues that failure to plan facilities through the Attachment K or similar process should trigger a presumption against receiving credits for such facilities.

57. Several petitioners request rehearing of the Commission's determination that denial of credits for a network customer would no longer trigger a need for the transmission provider to demonstrate that its own facilities satisfy the integration standard. East Texas Cooperatives contend that this decision improperly reverses the approach adopted in *FP&L*[35] and prohibits a network customer from challenging the rolled-in rate treatment of transmission provider facilities even when the customer's own facilities are found ineligible for credits. TAPS contends that reversing this policy is inconsistent with notions of comparability unless the Commission clarifies, as requested above, that the relaxed integration standard applies to both network customers and transmission providers. If a network customer's facilities are disqualified from eligibility for credits due to application of a more stringent integration standard, TAPS and TDU Systems argue that comparability requires the removal of the transmission provider's similar facilities from rates. NRECA agrees, arguing that the transmission provider must be required to remove its facilities from rates if customer-owned facilities that are similar in design and purpose to those transmission provider facilities are found ineligible for credits under the integration standard.

58. TAPS and FMPA ask the Commission to clarify that removal of the trigger applies only to denial of credit for new facilities to which the new presumption of integration applies. TAPS and FMPA point to language in paragraph 352 of Order No. 890–A providing that ''the denial of credits for a network customer no longer triggers a need for the transmission provider to demonstrate that its own facilities satisfy the integration standard.'' Both FMPA and TAPS interpret this language as applying to new facilities only. TAPS contends that the Commission does not and cannot offer any justification for

[32] *Citing* Order No. 890–A at P 351–52.

[33] *Citing Southern California Edison Co.,* 108 FERC ¶ 61,085, at P 9 n.11 (2004); *Southwest Power Pool, Inc.,* 108 FERC ¶ 61,078, at P 18 n.7 (2004), *reh'g denied,* 114 FERC ¶ 61,028 (2006); *ETEC,* 108 FERC ¶ 61,079, at P 26 n.11; *Northern States Power Co.,* 87 FERC ¶ 61,121 at 61,488 (1999).

[34] *Citing* Order No. 890–A at P 426.

[35] *Florida Mun. Power Agency* v. *Florida Power and Light Co.,* 74 FERC ¶ 61,006, at 61,010 (1996), *reh'g denied,* 96 FERC ¶ 61,130, at 61,544–45 (2001), *aff'd sub nom. Florida Mun. Power Agency* v. *FERC,* 315 F.3d 362 (D.C. Cir. 2003) (*FP&L*).

dispensing with the trigger in cases involving requests for credits for existing facilities, in which the presumption of integration adopted in Order No. 890 does not apply. TAPS is concerned that transmission providers will seek to remove the trigger for existing facilities, relying, *inter alia,* on the more general reference in Order No. 890–A to elimination of trigger.

59. Finally, FMPA seeks clarification on how the Commission's determinations on transmission credits will affect pending cases. FMPA asks the Commission to confirm that Order No. 890–A will not be applied to deny or weaken the comparability requirement for facilities at issue in Docket No. ER93–465–000, *et al.* FMPA also asks the Commission to clarify that the transmission credit policy articulated in Order No. 890 and Order No. 890–A will not preclude FMPA's ability to obtain full relief if the D.C. Circuit remands the Commission's decisions at issue in *Fla. Mun. Power Agency* v. *FERC* regarding charges for transmission that a network customer is physically unable to use.[36]

Commission Determination

60. The Commission affirms the decision in Order Nos. 890 and 890–A to revise the test for determining whether a network customer is eligible to receive credits for new facilities. Under the revised section 30.9 of the *pro forma* OATT, a network customer is eligible for credits if it demonstrates that its facilities are integrated with the operations of the transmission provider's facilities, provided that integration will be presumed for new customer-owned facilities that, if owned by the transmission provider, would be eligible for inclusion in the transmission provider's annual transmission revenue requirement as specified in Attachment H of the *pro forma* OATT. As the Commission explained in Order No. 890–A, the adoption of this presumption ensures comparability between network customers and transmission providers serving native load given that transmission providers are now obligated to plan their systems on an open and coordinated basis.[37]

61. Several petitioners question how this revised test is consistent with the Commission's statements that the integration standard applicable to new facilities remains unchanged and that Commission precedent regarding application of that standard will continue to apply.[38] As these petitioners note, the integration standard has historically been applied differently to network customers and transmission providers.[39] Transmission facilities owned by the transmission provider enjoyed a presumption of rolled-in rate treatment so long as any degree of integration was shown, while network customers were required to demonstrate affirmatively that their facilities were relied upon by the transmission provider to provide service to its customers.[40] The Commission therefore described the test for integration for network customer facilities as being more stringent than the test applied to transmission provider facilities.[41] The application of the integration standard was, in fact, more stringent as applied to network customers because they did not enjoy the benefit of presumed integration, as did the transmission provider. The underlying integration standard, however, has been and continues to be the same for all transmission facilities. Only those facilities that are, in fact, integrated with the transmission grid and used by the transmission provider to serve customers should be subject to rolled-in rate treatment. It is in this sense that the precedent continues to apply, providing guidance regarding the treatment of facilities that benefit from the presumption of integration and those that do not.

62. The presumption of integration enjoyed by the transmission provider has never been absolute. Customers have always been able to challenge the inclusion of certain transmission provider facilities by showing that the facilities did not actually provide a systemwide benefit to the transmission grid.[42] In most instances, however, this has not been the case given that the transmission provider generally plans, constructs and owns its facilities, from the very beginning, to meet delivery obligations, which justifies the presumption of integration.[43] In the event the transmission provider denied credits to a network customer, however, the transmission provider lost the benefit of the presumption and the same integration standard applied to customer-owned facilities was applied to the transmission provider's facilities.[44] This again demonstrates that the same underlying integration standard has applied to all facilities, regardless of ownership, notwithstanding the presumed integration generally enjoyed by the transmission provider.

63. In light of the planning-related reforms implemented in Order No. 890, the Commission determined it is now appropriate to grant the same presumption of integration to new customer-owned facilities that are similar in scope and design to those transmission provider facilities that are in rates. Implementation of planning-related reforms will now ensure that most, if not all, transmission facilities are planned on a coordinated basis.[45] However, only those new customer-owned facilities that are similar in design and purpose to the transmission provider's facilities that are in rates will be eligible for the presumption of rolled-in rate treatment. Other customer-owned facilities will be eligible for credits only if the network customer is able to make an affirmative showing that the facilities satisfy the integration standard, *i.e.,* that the facilities are nonetheless integrated notwithstanding their ineligibility for the presumption of integration.[46]

64. To be clear, if the transmission provider disagrees that the customer-owned facilities are similar in design and purpose to its own facilities, it may challenge the threshold application of the presumption with a comparative analysis of its facilities and those for which credits are claimed. Neither the transmission provider nor the network customer need analyze complete satisfaction of the integration standard in order to determine whether, as a threshold matter, the presumption of integration applies. Assuming that the network customer prevails in its claim for presumed integration, then the network customer will enjoy the same rolled-in rate treatment enjoyed by the transmission provider for its similar facilities. As the Commission explained in Order No. 890, this is appropriate to ensure comparability between the transmission provider and network customer now that all transmission facilities will be planned pursuant to an open and coordinated process.[47]

[36] No. 06–1285 (D.C. Cir. filed July 26, 2006).

[37] *See* Order No. 890–A at P 350.

[38] *See* Order No. 890–A at P 349.

[39] *Compare Utah Power & Light Co.,* 27 FERC ¶ 61,258, at 61,485–87 (1984), *reh'g denied,* 28 FERC ¶ 61,088, at 61,165 (1984) (*citing Utah Power & Light Co.,* Opinion No. 113, 14 FERC ¶ 61,112, *reh'g denied,* 15 FERC ¶ 61,076 (1981)) *with ETEC,* 114 FERC ¶ 61,027 at P 42.

[40] *NTEC,* 111 FERC ¶ 61,189 at P 17.

[41] *Id.* P 15.

[42] *See Idaho Power Co.,* 3 FERC ¶ 61,108 (1978), *reh'g denied,* 5 FERC ¶ 61,009 (1978); *Minnesota Power & Light Co.,* 16 FERC ¶ 63,012 (1981), *aff'd* 21 FERC ¶ 61,233 (1982).

[43] *See Niagara Mohawk Power Corp.,* 42 FERC ¶ 61,143, at 61,531 (1988); *Otter Tail Power Co.,* 12 FERC ¶ 61,169, at 61,420 (1980).

[44] *See Florida Power & Light Co.,* 105 FERC ¶ 61,287, at P 16 (2003).

[45] *See* Order No. 890 at P 736; Order No. 890–A at P 337.

[46] *See, e.g., Ne. Tex. Elec. Coop., Inc.,* 111 FERC ¶ 61,189 at P 16.

[47] Order No. 890 at P 435.

65. The transmission provider may nevertheless overcome the presumption of integration by demonstrating, with reference to its own facilities that meet the integration standard, that the customer-owned facilities are not, in fact, integrated and do not provide benefits to the system. The same is true of transmission provider facilities previously presumed to be integrated. In either case, the challenging party will bear the burden in overcoming the presumption of integration and rolled-in rate treatment. It is for this reason that it would no longer be appropriate to remove the presumption of integration enjoyed by the transmission provider, *i.e.*, apply the more strict integration standard, upon denial of credits to a network customer. In the past, only the transmission provider enjoyed the presumption of integration, which justified elimination of the presumption in the event credits were denied to a network customer. Both transmission providers and network customers now enjoy the benefits of presumed integration, and both may challenge application of the presumption to each other's facilities. We continue to believe that this will ensure that all similar facilities that are, in fact, not part of the integrated network that serves all customers are excluded from rates.[48] We acknowledge that this approach departs from the approach adopted in *FP&L*.[49] Our departure is justified, however, because the presumption of integration is now shared with new customer-owned facilities, shifting to the transmission provider the burden of demonstrating that credits for similar customer-owned facilities are not warranted.

66. We reject the suggestion by E.ON U.S. to reestablish a link between credits and joint planning by applying the presumption of integration only to upgrades planned through the transmission provider's Attachment K process. Although we support coordinated, open, and transparent planning, transmission providers are not required to develop transmission plans on a co-equal basis with customers.[50] It would therefore be unfair to network customers to condition the receipt of credits for new facilities on planning activities that are out of their control. Indeed, restablishing a link between joint planning and credits would revive disincentives the Commission sought to correct by severing the link between planning and credits in Order No. 890. We therefore affirm our decision to sever the link between credits and joint planning.

67. To the extent necessary, we clarify that none of the reforms regarding transmission credits adopted in Order No. 890 were intended to apply to facilities existing prior to the effectiveness of the revised section 30.9 nor to pending cases involving such facilities. Denial of credits to a network customer's previously existing facilities therefore still triggers review of the transmission provider's rate base. Similarly, a network customer may not rely on the presumption of integration for its previously existing facilities.

3. Capacity Reassignment

68. In Order No. 890–A, the Commission granted rehearing of its decision in Order No. 890 to remove the price cap on reassignments of transmission capacity, concluding that it is more appropriate to allow reassignments above the cap only during a study period ending on October 1, 2010. The Commission directed staff to closely monitor the development of the secondary market for transmission capacity during this period. To assist staff in this effort, the Commission affirmed the requirement for transmission providers to aggregate and summarize in an electronic quarterly report (EQR) the data contained in service agreements and related OASIS schedules for reassigned capacity. The Commission also directed staff to prepare a report on staff's findings within 6 months of the receipt of two years worth of data, *i.e.*, by May 1, 2010. Upon review of the staff report and any feedback from the industry, the Commission will determine whether it is appropriate to continue to allow reassignments of capacity above the price cap beyond the study period. In the absence of further Commission action, the price cap will resume effect as of October 1, 2010 under section 23.1 of the *pro forma* OATT.

69. The Commission clarified in Order No. 890–A that, as of the effective date of the reforms adopted in Order No. 890, all reassignments of capacity must take place under the terms and conditions of the transmission provider's OATT. As a result, there is no longer a need for the assigning party to have on file with the Commission a rate schedule governing reassigned capacity. To the extent that a reseller has a market-based rate tariff on file, the provisions of that tariff, including a price cap or reporting obligations, will not apply to the reassignment since such transactions no longer take place pursuant to the authorization of that tariff.

Request for Rehearing

70. The APPA Joint Filers argue on rehearing that the decision to remove the price cap for reassignments of transmission capacity during the study period is not supported by substantial evidence that the price cap has discouraged development of a secondary transmission market.[51] The APPA Joint Filers also contend that lifting the price cap on reassigned capacity will harm consumers by making transmission artificially scarce and overpriced. The APPA Joint Filers argue that the existence of congestion creates constrained regions within which market power can be exercised.

71. To further protect consumers, the APPA Joint Filers suggest that the Commission limit the experimental lifting of price caps to short-term reassignments.[52] The APPA Joint Filers state that long-term firm point-to-point transmission service is particularly important to LSEs looking to secure economic and reliable power supply and that non-firm releases of unscheduled transmission capacity will not help those LSEs needing long-term firm service. The APPA Joint Filers also argue that, by extending the experiment to long-term sales, including reassignments by the transmission provider's merchant function or affiliate, the Commission has discouraged needed transmission construction. If the secondary market is clearing at prices above the transmission provider's rate ceiling, the APPA Joint Filers contend that the parent corporation will have incentives to put as much capacity in the hands of its merchant function or affiliates as possible and to avoid new transmission construction. That result, the APPA Joint Filers argue, would reduce the access of LSEs to the long-term firm transmission service they require to meet their service obligations, in violation of FPA section 217(b)(4). The APPA Joint Filers suggest that the Commission can achieve its goal of determining whether the price cap encourages development of a secondary market and whether there is competition in such a market by lifting the price cap only for short-term reassignments.

72. The APPA Joint Filers also contend that the affirmative obligation

[48] *See* Order No. 890–A at P 351.

[49] *FP&L,* 74 FERC at 61,010 (finding that the integration of facilities into the plans or operations of a transmitting utility is the proper test for cost recognition).

[50] Order No. 890–A at P 188.

[51] The APPA Joint Filers include: APPA, NRECA, TAPS and TDU Systems.

[52] *Citing Interstate Natural Gas Ass'n of Am.* v. *FERC,* 285 F.3d 18 (D.C. Cir. 2002).

of the transmission provider to expand its system in order to accommodate requests for service is inadequate to ensure customers are protected. The APPA Joint Filers note that this obligation has existed since 1996, yet the Commission in Order No. 890 found that it had not succeeded in overcoming transmission providers' incentives to avoid transmission investment, especially in favor of their own generation.[53] The APPA Joint Filers contend that the Commission has no factual basis to conclude that entry in the form of expanded transmission capacity will be timely, likely and sufficient to defeat price increases due to transmission market power.

73. The APPA Joint Filers acknowledge that Commission staff will be monitoring the EQRs and other data during the two-year period with the goal of preparing its report, but argue that this does not alleviate the Commission of its obligation to actively monitor resale of transmission capacity during the period to ensure that rates for customers remain just and reasonable and that there are no abuses of market power. The APPA Joint Filers ask the Commission to explicitly establish its intent to continue to exercise its obligations under sections 205 and 206 throughout this period so that resellers are on notice that they cannot charge unjust and unreasonable rates. If the Commission discovers evidence of unjust and unreasonable rates at any time, the APPA Joint Filers urge the Commission to address this as it occurs, including if necessary by terminating the experiment prior to October 1, 2010.

74. With regard to the staff report, the APPA Joint Filers ask the Commission to prescribe the parameters, procedures and data to be collected and provide guidance as to the issues that should be addressed. The APPA Joint Filers suggest that the Commission direct staff to address the following specific matters in the report: Identify whether there is an increase in reassignments by examining data on the amount of reassignments before and after the price caps were lifted; examine prices both offered and accepted to determine the level of market interest in reassigned capacity, whether prices increased, the cause of price changes, and whether prices remained within a zone of reasonableness; examine whether competition among resellers is sufficient to protect consumers from excessive rates; identify the kinds of products resold, such as the length of reassignments and whether reassigning customers redirected service; consider whether reservations by the transmission provider's merchant function or affiliates increased, whether they reassigned the capacity reserved, and to whom and at what price they reassigned service; indicate whether the transmission provider's interactions with affiliated resellers were covered by the Standards of Conduct; and, assess whether those needing transmission capacity were able to obtain it, whether in the primary or secondary market.

75. To the extent the EQR data or other sources do not provide this information, the APPA Joint Filers suggest that the Commission institute data reporting and collection requirements to obtain that information. The APPA Joint Filers state particular concern regarding the elimination of the reporting requirement under the reseller's market-based rate tariff. The APPA Joint Filers contend that lifting the price cap will allow market-based sellers to use transmission capacity reassignment to support attempts to exercise market power in sales of transmission, electricity, or both. Because a market-based seller no longer needs to report its own transmission reassignments and because the transmission provider will report reassignments only on an aggregate, summary basis, the APPA Joint Filers argue that the EQR data will not permit monitoring to detect patterns or conduct that suggest efforts to manipulate or exercise market power in transmission markets. The APPA Joint Filers contend that, by separating data on the market-based seller's electricity sales from the data on the same seller's transmission reassignments, the Commission has made it difficult to determine whether a market-based seller is manipulating transmission resales to favor its market-based sales because it will be impossible to determine whether a particular capacity reassignment supported a market-based sale. The APPA Joint Filers therefore request that the Commission grant rehearing and retain the requirement that all holders of market-based rate authority report both their electricity sales and their capacity reassignments in the same EQR.

76. Finally, once the staff report is issued, the APPA Joint Filers ask that it be noticed and that the public be provided an opportunity to comment. The APPA Joint Filers contend that the data underlying the report must be made public, with sensitive information subject to appropriate confidentiality protections. If the Commission believes that further extension of the experiment is merited, the APPA Joint Filers ask the Commission to use full notice and comment rulemaking procedures to ensure a complete record is developed to support any further Commission action.

Commission Determination

77. The Commission affirms its decision to remove the price cap on reassignments of transmission capacity to accommodate a study period expiring on October 1, 2010. For the reasons stated in Order Nos. 890 and 890–A, we continue to believe that lifting the price cap during the study period will foster the development of a more robust secondary market for transmission capacity.[54] Point-to-point transmission service customers will have increased incentives to make their service available to others that place a higher value on it, which in turn will send more accurate signals that promote efficient use of the transmission system by fostering the reassignment of unused capacity.

78. Although the Commission agrees with the APPA Joint Filers that transmission capacity, and in particular long-term transmission capacity, is of great importance to LSEs and other customers, we disagree that restricting transactions above the price cap only to short-term reassignments is necessary to preserve access to service under the *pro forma* OATT. As the Commission emphasized in Order Nos. 890 and 890–A, transmission providers are under an affirmative obligation to offer all available capacity to customers on a non-discriminatory basis and to expand their systems as necessary to accommodate additional requests for service.[55] The *pro forma* OATT does not, and will not, permit the withholding of transmission capacity by the transmission provider and effectively establishes a price ceiling for long-term reassignments at the transmission provider's cost of expanding its system. The fact that a transmission provider's affiliate may profit from congestion on the system does not relieve the transmission provider of its obligation to offer all available transmission capacity and expand its system as necessary to accommodate requests for service. We therefore disagree that allowing reassignments of transmission capacity above the price cap will reduce the access of any customer to service under the *pro forma* OATT.

79. The APPA Joint Filers are therefore incorrect that lifting the price cap will make transmission capacity

[53] *Citing* Order No. 890 at P 424.

[54] Order No. 890 at P 808; Order No. 890–A at P 388–89.

[55] Order No. 890 at P 814; Order No. 890–A at P 392.

artificially scarce and overpriced during the study period. Transmission providers must continue to make primary capacity available at the rates specified in their individual OATTs. Customers that do not wish to participate in the secondary market may continue to take service from the transmission provider directly, just as if the price cap had not been lifted. For those customers participating in the secondary market, however, lifting the price cap will create additional incentives for others to make service available, increasing the ability to obtain transmission capacity.

80. The APPA Joint Filers incorrectly characterize the Commission's statement in paragraph 392 of Order No. 890 as finding that the transmission provider's obligation to expand the system in response to service requests was inadequate to overcome incentives to avoid transmission investment. In the passage cited, the Commission instead found that this requirement was inadequate to overcome incentives to exclude customers from the transmission planning process.[56]

To remedy that disincentive, the Commission required transmission providers to implement open and transparent planning processes that allow customers and other stakeholders to provide input in the development of transmission plans. The Commission specifically noted that those planning obligations did not address or dictate which investments identified in a transmission plan should be undertaken by the transmission provider.[57]

81. The APPA Joint Filers inappropriately discount the importance of the transmission provider's affirmative obligation to expand its system in response to requests for service. The Commission has historically relied on these and other obligations under the pro forma OATT sufficient to mitigate the potential exercise of transmission market power by transmission providers and their affiliates.[58] Lifting the price cap on reassignments of transmission capacity does not alter those obligations in any way and, therefore, does not impair the ability of load-serving entities to meet their load service obligations. By lifting the price cap on capacity reassignments, the Commission has instead enhanced the options available to customers seeking transmission service by increasing the incentives for customers with transmission reservations to make capacity available to others placing a higher value on it.

82. We are nevertheless sensitive to the concerns expressed regarding the potentially negative competitive effects of lifting the price cap on reassignments of transmission capacity. It is for that very reason that the Commission granted rehearing in Order No. 890–A, at the request of the APPA Joint Filers, to limit the period in which the price cap is lifted. During the study period, continuing rate regulation of the transmission provider's primary capacity, competition among resellers, and reforms to the secondary market for transmission capacity, combined with enforcement proceedings, audits, and other regulatory controls, will assure that prices in the secondary market remain within a zone of reasonableness.[59] Should any customer believe that capacity is being preferentially allocated to a transmission provider's affiliates, that particular holders of transmission capacity are attempting to exercise market power through hoarding or other tactics, or that the transmission provider is failing to meet its expansion obligations, the customer should bring the matter to the Commission's attention through a complaint or other appropriate procedural mechanisms. If the Commission finds evidence of market abuse, it can act to restrict the ability of an offending reseller (and possibly its affiliates) to participate in the secondary market or impose other remedies, including civil penalties, as appropriate to ensure that rates for secondary transmission capacity are just and reasonable.

83. With respect to our expectations for the report to be prepared by Commission staff, we clarify that staff should focus on the competitive effects of removing the price cap for reassigned capacity. Staff should consider the number of reassignments occurring over the study period, the magnitude and variability of resale prices, the term of the reassignments, and any relationship between resale prices and price differentials in related energy markets. Staff should also examine the nature and scope of reassignments undertaken by the transmission provider's affiliates and include in its report any evidence of abuse in the secondary market for transmission capacity, whether by those affiliates or other customers.[60]

84. As requested by the Joint APPA Filers, we have reconsidered our reporting requirements and determined that it would be useful to direct transmission providers to include certain additional information in their EQRs. We direct transmission providers to include in their EQRs the identity of the reseller and indicate whether the reseller is affiliated with the transmission provider. Each transmission provider also must include the rate that would have been charged under its OATT had the secondary customer purchased primary service from the transmission provider for the term of the reassignment. We direct transmission providers to submit this additional data for all resales during the study period and to update, as necessary, any previously-filed EQRs on or before the date they submit their next EQR.

85. We disagree that elimination of the reporting requirement under the reseller's market-based rate tariff will impair the ability of staff to perform its analyses. All reassignments of transmission capacity now take place under the transmission provider's OATT and, therefore, it is appropriate for the transmission provider to report those transactions on its EQR. We reiterate that the EQR must contain all relevant transaction data, whether stated in the service agreement governing the reassignment or in a related OASIS schedule.[61] Transmission providers should not aggregate multiple transactions into single line items on the EQR. All terms must instead be fully described and rates provided for each reassignment.[62]

86. Upon review of the staff report, the Commission will determine whether it is appropriate to institute further rulemaking procedures to amend the *pro forma* OATT to allow reassignments of transmission capacity above the price cap after October 1, 2010. The report will be made public and subject to comment, with sensitive information subject to appropriate confidentiality protections. In the absence of Commission action, the rate charged by the transmission provider for each reassignment, and the corresponding credit to the reseller, may not exceed the higher of (i) the original rate paid by the reseller, (ii) the transmission provider's maximum rate on file at the time of the assignment, or (iii) the reseller's

[56] *Id.* P 424.

[57] *Id.* P 438.

[58] *See* Order No. 697 at P 408.

[59] *See* Order No. 890 at P 811; Order No. 890–A at P 391.

[60] *See id.* P 406.

[61] *See* Order No. 890 at P 423, n.162.

[62] *See* Order No. 890 at P 818, n.499. The Commission's reference to ''aggregate[ing] and summarize[ing] in an EWQ the data contained in the service agreements for reassigned capacity'' in Order Nos. 890 and 890–A was intended to refer to the transmission provider's obligation to compile reassignments involving multiple parties in a single EQR, not consolidate multiple reassignments into single line items on the EQR.

opportunity cost capped at the transmission provider's cost of expansion.[63]

4. Operational Penalties

87. In Order No. 890–A, the Commission affirmed the decision in Order No. 890 to subject all transmission providers, including RTOs and ISOs, to operational penalties when they routinely fail to meet the deadlines prescribed in sections 19.2, 19.4, 32.3 and 32.4 of the *pro forma* OATT. The Commission explained that the 60-day due diligence deadlines set forth in those sections serve as a good measure of a transmission provider's use of due diligence since, in its experience, the vast majority of transmission studies can be completed in that time period.

88. The Commission rejected requests to change section 19.9 of the *pro forma* OATT, concluding that transmission providers will have the ability to explain in notification filings the extenuating circumstances that lead to delay in processing transmission service request studies and, in turn, demonstrate their use of due diligence notwithstanding the inability to meet the 60-day target. The Commission also rejected requests to create broad categories or lists of extenuating circumstances that would exempt transmission providers from late study penalties or related posting requirements.

Requests for Rehearing and Clarification

89. E.ON U.S., EEI, and Southern contend that the Commission has failed to justify the use of 60 days as the time frame for processing transmission service request studies with due diligence. These petitioners argue that the Commission's stated experience that the vast majority of studies are completed within 60 days is unsupported by data or any other evidence. Southern further argues that any experience regarding processing times does not reflect the increased redispatch and conditional firm study obligations imposed under Order No. 890. Southern argues that transmission planners are also facing additional workforce pressures due to development of reliability standards, worker shortages, and Attachment K planning processes. Southern suggests that the Commission grant rehearing to allow for an additional 30 days to process transmission studies or, at a minimum, to process conditional firm and redispatch options. Southern acknowledges that the Commission determined in Order No. 890–A that the mere possibility of penalties did not justify extension of the 60-day study period. Southern argues, however, that the notification and additional posting requirements are in and of themselves penalties, as are the requirements to then complete 90 percent of studies within 60 days.

90. E.ON U.S., EEI, and Southern also ask the Commission to add a clearer due diligence standard to section 19.9 of the *pro forma* OATT. They contend that it is necessary to specify in the tariff the circumstances that will excuse the transmission provider from penalties. These petitioners argue that failure to articulate a clear standard gives the Commission too much discretion in applying penalties and leaves transmission providers guessing as to what due diligence means. Southern argues that a lack of clarity violates due process and the Commission's enforcement policies because transmission providers do not have adequate notice of the circumstances that will subject them to penalties. Southern contends that the risk of late study penalties creates a guilty until proven innocent standard that will result in transmission providers favoring speed over accuracy, which could harm reliability.

91. EEI agrees that failure to expressly include a due diligence standard in section 19.9 provides the Commission undue discretion to apply penalties even if the transmission provider has used due diligence in processing request studies. EEI argues that the language of section 19.9 does not adequately reflect that the inability to complete a study within the 60-day timeframe may be due to customer actions or the need to complete other interdependent studies. At a minimum, EEI asks the Commission to amend section 19.9(iii) to state that the transmission provider will not be subject to penalties if it demonstrates that it exercised due diligence but nonetheless failed to complete a sufficient percentage of its studies within 60 days. EEI also requests that the Commission provide additional guidance in this proceeding as to what factors constitute due diligence that are sufficiently clear and specific that a transmission provider can reasonably determine whether its actions satisfy those guidelines.

92. E.ON U.S., EEI, and Southern further argue that operational penalties should not be imposed until the Commission makes an affirmative finding that the transmission provider did not exercise due diligence in processing request studies. EEI and Southern argue that due process and the Commission's enforcement policies require notice and hearing procedures prior to application of penalties. If a transmission provider fails to complete 90 percent of studies within a 60-day period, EEI suggests that the transmission provider be rebuttably presumed to have failed to exercise due diligence in processing request studies and that penalties apply only after notice and an opportunity for hearing.

93. Southern suggests that the explanation of extenuating circumstances in a notification filing should automatically suspend the obligation to post additional metrics, the obligation to process 90 percent of study requests within 60 days, and the threat of monetary penalties until the Commission determines that the extenuating circumstances did not exist. Southern states that this would shift the burden of proof to the Commission and no longer treat transmission providers as guilty until proven innocent. E.ON U.S. argues that deferring the obligation to pay penalties until after the Commission has rejected the transmission provider's explanation for delay would be more efficient because transmission providers would not need to seek refunds from customers to whom it has made distribution of penalties for delays the Commission later finds justifiable.

94. E.ON U.S. seeks clarification that not-for-profit transmission providers are responsible for processing transmission request studies within the same time period prescribed for other transmission providers and are equally responsible for paying late study penalties. E.ON U.S. argues that the ability to request cost recovery of late study penalties on a case-by-case basis should not be used to skirt the obligations established in Order No. 890.

95. NYISO asks the Commission to clarify that it did not intend in Order No. 890–A to preclude transmission providers from proposing alternative study deadlines pursuant to FPA section 205. NYISO states that, because it provides a financial reservation based transmission service reservation, it does not receive, or deny, requests for transmission service in the way that Order Nos. 888 and 890 contemplate. NYISO states it conducts transmission studies only in unusual situations, such as when a customer wants to explore whether it would be more economical to pay congestion charges or to fund the construction of new transmission facilities in order to obtain incremental congestion hedging rights from NYISO. As a result, only a handful of system impact study requests have been submitted to the NYISO in the last nine

[63] *See* section 23.1 of the *pro forma* OATT.

years and, according to NYISO, each take substantial time to process.

96. NYISO also requests clarification regarding the transmission provider's liability when delegating responsibilities for conducting transmission studies. NYISO states that it has responsibility for conducting system impact studies under its OATT, while its member transmission owning utilities retained responsibility for conducting facilities studies. NYISO asks the Commission to clarify that its member transmission owning utilities are responsible for ensuring that facilities studies are conducted in a timely manner. NYISO argues that it would be arbitrary and capricious to hold NYISO responsible for failures by the member transmission-owning utilities to comply with their own obligations.

Commission Determination

97. The Commission affirms the decision in Order Nos. 890 and 890–A to subject transmission providers to operational penalties when they routinely fail to meet the 60-day due diligence deadlines prescribed in sections 19.2, 19.4, 32.3, and 32.4 of the *pro forma* OATT.[64] Transmission providers must have a meaningful stake in meeting study timeframes, and the operational penalty structure adopted by the Commission provides reasonable financial incentives for transmission providers to exercise due diligence in processing service requests in a timely and nondiscriminatory manner.

98. We disagree that the notice procedures adopted in Order No. 890 give inadequate opportunities to explain why studies have been completed late. Due process does not require the use of notice and hearing procedures prior to applying operational penalties for failing to exercise due diligence in processing transmission service request studies within the 60-day study period, nor must the Commission make an affirmative finding regarding the justifications provided in a notification filing prior to the application of penalties. Section 19.9 of the *pro forma* OATT requires the submission of a notification filing and the application of penalties when certain clearly identified triggering conditions occur, *i.e.*, failure to complete studies within the prescribed timeframes. Transmission providers therefore have adequate notice of the actions that may lead to penalties. We note that transmission customers that pay other operational penalties, like unreserved use penalties, do not receive notice or have hearing procedures prior to paying the penalty.

99. At the same time, to ensure that penalties are not applied to transmission providers when study delays are justified, the Commission has provided an opportunity for each transmission provider to explain the extenuating circumstances that prevented it from meeting the 60-day study completion deadline. Upon review of the notification filing, the Commission will waive the penalties if a transmission provider establishes that its non-compliance is the result of extenuating circumstances.[65] If the Commission is unable to act on the notification filing prior to the date on which the penalties would apply, the transmission provider will remain liable for paying the penalties, but is not required to distribute those penalties while the notification filing remains pending.[66] The Commission concluded in Order No. 890, and we affirm here, that this adequately balances the transmission provider's due process rights with the need to provide an incentive to the transmission provider to complete studies on a timely basis.[67] It is therefore unnecessary, as petitioners argue, to amend the language of section 19.9 of the *pro forma* OATT to specifically include a due diligence standard or otherwise identify in the tariff or elsewhere the circumstances that will excuse the transmission provider from penalties. Consideration of the particular extenuating circumstances causing a transmission provider to repeatedly miss study deadlines is best left to a case-by-case analysis.

100. We also affirm the decision in Order No. 890–A not to extend the 60-day deadline as petitioners request.[68] The 60-day deadlines have existed for many years.[69] Although petitioners challenge that conclusion as unsupported, none dispute the proposition that 60 days is generally sufficient to complete most transmission studies and, instead, contend that certain types of studies take longer or that certain transmission providers have less ability to process studies within that period. Yet that is precisely why the Commission has provided an opportunity for each transmission provider to demonstrate that extenuating circumstances prevented it from timely processing the relevant studies notwithstanding its inability to meet the 60-day target. Transmission providers are free to discuss in their notification filings any factors they believe are relevant, including any of the factors cited by Southern.

101. In response to E.ON U.S., we affirm that all transmission providers, including RTOs and ISOs, are bound by the 60-day timelines of sections 19.2, 19.4, 32.3 and 32.4 and the requirements of section 19.9. The Commission clarifies, in response to NYISO, that transmission providers are free to make filings under FPA section 205 to seek variations from the *pro forma* OATT and demonstrate that alternative tariff provisions are consistent with or superior to the *pro forma* OATT. With regard to the allocation of study responsibilities between NYISO and its transmission owning members, we note that the Commission in Docket No. OA08–13–000 determined that the responsibility for facility studies, and penalties associated with such studies, rests with the transmission owning members under the NYISO tariff.[70]

5. ''Higher Of'' Pricing Policy

102. In Order No. 890, the Commission concluded that changes to the *pro forma* OATT were not needed to address the practice by some transmission providers of quoting incremental rates as lump sum payments, a practice that is inconsistent with our ratemaking policy. The Commission explained that the transmission provider must continue to include a proposed monthly incremental rate with its offer of service whenever it proposes to charge the customer an incremental rate. The transmission provider also must provide cost support for the derivation of the rate consistent with the cost support that the transmission provider would provide to the Commission in a section 205 rate filing.

103. The Commission affirmed this decision in Order No. 890–A, noting that the capital costs of upgrades, as estimated in a facilities study and eventually specified in a service agreement through an incremental rate, are not subject to change once the customer has executed the service agreement. The Commission explained that it would not be appropriate to vary capital costs over the term of such contracts.

Request for Rehearing

104. Duke, E.ON U.S., and EEI argue that the Commission's statement that

[64] *See* Order No. 890 at P 1340; Order No. 890–A at P 741.

[65] *See* Order No. 890 at P 1343.

[66] *See id.* P 1349.

[67] *Id.*

[68] Order No. 890–A P 746.

[69] *See* Order No. 888–A at 30,324.

[70] *See N.Y. Indep. Sys. Operator, Inc.,* 123 FERC ¶ 61,134 (2008).

capital costs of network upgrades may not vary during the term of a service agreement is inconsistent with other sections of the *pro forma* OATT. Duke notes that section 19.4 of the *pro forma* OATT requires execution (or filing) of a service agreement a mere thirty days after completion of the facilities study and, therefore, the service agreement can only contain a good faith estimate of network upgrade costs. EEI and E.ON U.S. agree, noting section 19.5 further allows for revisions to the good faith estimate to reflect certain changed circumstances. EEI and E.ON U.S. contend that transmission providers generally are not able to determine the actual cost of required facilities until construction is completed, which is long after execution of the service agreement.

105. EEI and E.ON U.S. argue that not allowing capital costs of upgrades to vary after execution of the service agreement will result in the transmission provider either under-recovering the cost of the incremental facilities or the customer overpaying the cost of those facilities and, as a result, charges will not be just and reasonable. These petitioners suggest that the transmission provider be allowed to modify a service agreement to reflect the actual costs of incrementally-charged network upgrades after the facilities are placed in service. Duke agrees, arguing that providing for a true-up at a later date is routine when facility costs are directly assigned, rather than rolled in. Duke suggests that customers be free to negotiate the ability to terminate the service agreement if a cost estimate turns out to far understate actual costs. Duke contends that the Commission's statement regarding the inability of capital costs to vary was merely a general observation and that the Commission should review rate changes on a case-by-case basis.

106. Duke, EEI, and E.ON U.S. further argue that prohibiting recovery of additional capital costs that the transmission provider is likely to incur when repairing or replacing portions of incrementally-charged upgrades during the term of a service agreement denies the transmission provider of its rights under section 205 of the FPA. While the incremental facilities on which the cost of service is based (*e.g.*, a specific substation or line segment) should not be allowed to vary, EEI contends that transmission providers should be allowed recover the additional capital costs associated with repair or replacement of those facilities. EEI and E.ON U.S. suggest that remedies such as formula rates or a section 205 filing should be available to a transmission provider to recover these additional costs.

Commission Determination

107. The Commission affirms the determination in Order No. 890 that capital costs specified in a service agreement are not subject to change once the customer has executed the service agreement.[71] We clarify, however, that this statement was intended to refer to agreements in which a customer and transmission provider have specifically identified particular upgrade costs to be paid by the customer, allowing for a clear comparison of incremental costs to the transmission provider's embedded cost rate. In such instances, it would violate fundamental concepts of contract law, as well as undermine the ''higher of'' pricing policy, to allow either the customer or the transmission provider to unilaterally change the costs previously agreed to by the parties. The Commission therefore explained in Order No. 890–A that it would not be appropriate to vary, *i.e.*, change, capital costs specified in such contracts.

108. Nothing in Order Nos. 890 or 890–A, however, altered the ability of the transmission provider and transmission customer to negotiate alternative pricing arrangements such as recovering estimated costs subject to a true-up when upgrades are complete. The Commission did not mean to imply in Order No. 890–A that such alternative pricing arrangements are necessarily prohibited. As the Commission explained in Order No. 890, application of the ''higher of'' policy to particular cases, including proposals to adopt flexible pricing arrangements, is largely fact-specific and best addressed on a case-by-case basis during particular rate proceedings.[72]

6. Other Ancillary Services

109. In Order No. 890–A, the Commission denied a request by Sempra Global to require the transmission provider to offer and make available operating reserves under schedules 5 and 6 of the *pro forma* OATT when transmission service is used to serve load outside the transmission provider's control area. The Commission explained that operating reserves are needed to serve load within the control area in the event of system contingencies and, unless alternative arrangements are made, the transmission provider provides these reserves from its own resources. The Commission found that it would be inappropriate to require the transmission provider to use its resources to provide additional operating reserves to loads in other control areas because the transmission providers in those control areas are under their own obligations to make operating reserves available. The Commission affirmed those obligations and stated that modifications to the *pro forma* OATT were not necessary to enable generators to engage in firm power sales to loads outside of their control area.

Request for Clarification

110. Sempra Global argues that the Commission did not fully appreciate the problems faced by generators in obtaining operating reserves in the WECC. If transmission providers are not required to offer operating reserves when transmission service is used to serve load outside the transmission provider's control area, Sempra Global asks that the Commission, at a minimum, clarify that generator imbalance service under Schedule 9 of the *pro forma* OATT may be utilized to provide sufficient imbalance energy to keep a customer's schedule whole for at least two hours following a generator derating or forced outage, if necessary to allow the generator sufficient time to find and schedule replacement energy. Sempra Global states that clarification is needed because, if a generator trips within 20 minutes prior to the beginning of the hour, it is too late to schedule replacement energy for the hour that is about to begin.

111. Sempra Global disagrees that the existing requirements of the *pro forma* OATT are sufficient to ensure that operating reserves are available to merchant generators in the WECC, pointing to the differing definitions for ''reserves'' in the West. Sempra Global explains that in the WECC ''Operating Reserves'' consist of two main components: Regulating Reserve and Contingency Reserve.[73] According to Sempra Global, WECC's Regulating Reserve could include, but would not necessarily be limited to, regulation service offered under schedule 3 of the *pro forma* OATT, while WECC's Contingency Reserve could include, but would not necessarily be limited to, operating reserve services under Schedules 5 and 6 of the *pro forma* OATT.

112. Although independent power generators have access to regulation service under schedule 3 and generator

[71] *See* Order No. 890–A at P 491.

[72] *See* Order No. 890–A at P 883.

[73] *Citing* WECC Standard BAL–STD–002–0—Operating Reserves.

imbalance service under Schedule 9 from their source balancing authority, Sempra Global states that they may not have access to any Contingency Reserves for exports from their host balancing authority. Sempra Global contends that it can be difficult, if not impossible, for generators to contract for Contingency Reserves from a third party without switching to that party's balancing authority or having a dynamic schedule or other telemetry to enable the provider of Contingency Reserves to know when the generator trips and to have the reserves provider's generation respond within ten minutes. Sempra Global contends that intra-hour schedule changes are not normally allowed by most balancing authorities in the West and that Operating and/or Contingency Reserve service can most logically be provided to a balancing authority or reserve sharing group, not an individual customer. Sempra Global states that this complex type of arrangement could not be practicably implemented for short-term transactions, or when the output of a generator is split between multiple buyers and ultimately delivered into multiple balancing authorities.

113. Even if a generator were able to contract with a third party to provide operating reserves, Sempra Global states that it is unaware of any workable mechanism to assure a load (or ''sink'') balancing authority that it will have access to such reserves when needed. Sempra Global also notes that a generator, as a seller, may not necessarily have a load since transactions frequently involve numerous parties between the generator and the load. Sempra Global states that a generator may not know who the load is until the NERC eTags are generated during the WECC pre-scheduling process, which typically takes place the day before the power flows. Even if the sink balancing authority is known at the time a long-term transaction is entered into, Sempra Global states that a generator still may be unable to procure operating reserves to support the transaction. Sempra Global describes a transaction it entered into in 2002 in which none of the host transmission provider, the purchaser's transmission provider, nor the purchaser itself was willing to offer to provide Sempra Global with operating reserves to support the transaction. Since many LSE purchasers in the West enter into firm energy import transactions specifically to reduce their operating reserves obligations, Sempra Global states that it would be rarely fruitful for a generator to request, as part of its negotiation with a customer, that the customer acquire reserves from its transmission provider.

Commission Determination

114. The Commission affirms the decision in Order No. 890-A not to require transmission providers to offer and make available operating reserves under Schedules 5 and 6 of the *pro forma* OATT when transmission is used to serve load outside the transmission provider's control area. As the Commission explained, operating reserves are needed to serve load within the control area in the event of system contingencies. Unless alternative arrangements are made, the transmission provider would serve as the provider of last resort for these reserves. We continue to believe it would be inappropriate to require the transmission provider to provide additional operating reserves to loads in other control areas because the transmission providers in those areas are under their own obligation to make operating reserves available.

115. We appreciate Sempra Global's concern that these obligations may be insufficient to enable merchant generators in the WECC to obtain operating reserves in certain circumstances. Since its adoption, however, the *pro forma* OATT has placed the obligation to procure operating reserves squarely on load.[74] It appears that market rules have developed in the WECC in a way that transfers that responsibility from transmission customers serving load to those providing resources. It does not follow, however, that the *pro forma* OATT—a tariff of general applicability—must be amended to accommodate that regional practice. To the extent transmission providers in the WECC wish to amend their tariffs to accommodate the WECC market rules, they may submit such variations to the Commission for consideration. Alternatively, the market rules themselves could be amended to reflect the structure of obligations under the *pro forma* OATT.[75]

[74] *See* Section 3 of the *pro forma* OATT.

[75] We understand that WECC is in the process of developing a revised standard to address the responsibility for procuring contingency reserves. WECC Standard BAL–002–WECC–1—Contingency Reserves, available at *http://www.wecc.biz/documents/library/Standards/2007/BAL-002/BAL-002-WECC-1_1-25-08.pdf.* To the extent that there are any conflicts between the revised WECC standard and the *pro forma* OATT, Sempra Global should raise those concerns when that revised standard is submitted for consideration by the Commission.

C. Non-Rate Terms and Conditions

1. Modifications to Long-Term Firm Point-to-Point Service

116. In Order No. 890, the Commission concluded that the methods for evaluating requests for long-term point-to-point transmission service may not be comparable to the manner in which transmission service is planned for bundled retail native load and, therefore, may no longer be just, reasonable and not unduly discriminatory. To remedy this potential for undue discrimination, the Commission amended the *pro forma* OATT to modify planning redispatch requirements and require transmission providers, other than most RTOs and ISOs, to offer a conditional firm option to long-term point-to-point customers. The Commission affirmed that decision in Order No. 890–A and provided certain clarifications regarding the transmission provider's obligation with regard to planning redispatch and conditional firm service.

a. Requirement To Offer Conditional Firm Service

117. In Order No. 890–A, the Commission denied rehearing of its decision not to require transmission providers to offer conditional firm service to network customers. The Commission explained that network customers can designate network resources any time firm transmission is available and that the term of the designation can include periods of less than a year. Network customers can also use secondary network service to access resources during times when firm service is not available. The Commission concluded that this flexibility to use designated network resources and secondary network service to access undesignated resources already provides a service that is like conditional firm that can be used to integrate new resources. The Commission noted, however, that transmission providers employ automatic devices, such as special protection schemes, to take resources offline during certain system conditions. The Commission determined that comparability requires the study of these automatic devices for network customers seeking to designate network resources and revised section 32.3 of the *pro forma* OATT to require the study of automatic devices at the request of a network customer.

Requests for Rehearing and Clarification

118. NRECA and TAPS repeat arguments made on rehearing of Order No. 890 that the Commission must make

conditional firm service available to network customers. NRECA contends that a transmission provider will not reject a resource for its own bundled retail load simply because it may be unavailable for a few hours per year due to congestion. NRECA argues that a transmission provider will, however, reject a request by a network customer to designate that same resource because of the same limited availability. NRECA concludes that conditional firm network service is therefore necessary to eliminate undue discrimination between network customers serving network load and the transmission provider serving its load.

119. NRECA acknowledges that network customers may designate network resources any time firm transmission is available and use secondary network service to access resources when firm service is not available. NRECA notes, however, that the Commission justified granting conditional firm service to point-to-point customers by stating that it made little sense to ask point-to-point customers to cobble together a collection of firm and non-firm requests when only the transmission provider has information about when service may be available or unavailable.[76] NRECA argues that network customers should not be required to cobble together service comparable to that enjoyed by the transmission provider by designating a resource at some times and accessing it through secondary network service at others.

120. NRECA also argues that the Commission improperly assumed that secondary network service can provide a service that resembles conditional firm service. NRECA contends that the curtailment priority of secondary network service is inferior to conditional firm service. NRECA provides a scenario in which the transmission provider, a conditional firm customer and a network customer using secondary network service are taking power from the same generator in a location that is constrained ten hours per year. NRECA argues that the network customer will be curtailed before the transmission owner and before the conditional firm customer. NRECA adds that conditional firm customers are considered firm customers and will be able to request service far in advance and to the detriment of secondary network customers. NRECA concludes that a network customer can only protect itself from loss of service and loss of scheduling priority by paying for a network upgrade, which is an obligation not imposed on either the transmission provider or the point-to-point customer.

121. TAPS agrees that the rights of network customers are significantly inferior to those of conditional firm customers. TAPS contends that a network customer would be required to have perfect knowledge, at the time of a network resource designation, as to the effects of constraints in order to limit its decision to periods when transmission is adequate to accommodate the request. TAPS argues that information about constraints gained as a result of an initial designation request is of minimal value since a reframed request would take a later place in the queue.

122. TAPS also argues that the clarification provided in Order 890–A that excess capacity created by transmission upgrades should be allocated first to conditional firm customers based on their initial order in the queue further degrades the benefit of network service. Even if network customers could predict periods for which to request secondary network service and firm designations, TAPS argues that they still could not create a service comparable to conditional firm service given the potential benefit of being firmed up by excess capacity produced by later upgrades. TAPS contends that the exclusion of network customers is discriminatory given the Commission's finding that transmission providers provide conditional service to themselves and the requirement under section 28.2 of the *pro forma* OATT that transmission providers ''designate resources and loads in the same manner as any Network Customer under Part III of this Tariff.'' TAPS further asserts that the Commission should clarify whether the customer supporting the upgrade is protected from having its upgrade sized to meet the needs of earlier-queued conditional firm customers.

Commission Determination

123. The Commission again affirms the decision not to create a conditional firm network service.[77] As the Commission explained in Order No. 890–A, the flexibility to use designated network resources and secondary network service to access undesignated resources already provides a service that is like conditional firm service that can be used to integrate new resources. The Commission also revised section 32.3 of the *pro forma* OATT to make clear that network customers have the right to request the study of special protection schemes like those used by transmission providers in designating resources for their native loads.[78] Further, Order No. 890 provided that network customers may designate off-system resources supported by conditional firm point-to-point service.[79] All of these provisions collectively allow network customers to designate resources in the same manner that transmission providers designate resources for their loads. We therefore reject arguments that denial of conditional firm network service results in network service that is inferior to the transmission provider's own use of the system to serve its load.

124. While we agree with NRECA that conditional firm customers will be able to request service in advance of secondary network customers, we find this provides no reason to create a new conditional firm service for network customers. Those seeking conditional firm service should have the ability to request service ahead of secondary network service, a non-firm service. Network customers seeking to designate their resources and avoid the use of secondary network service may request the study of special protection schemes in their system impact study. Taken together, the rights of network customers are therefore not inferior to those of conditional firm customers. Indeed, network customers enjoy advantages over conditional firm customers, including access to reliability redispatch to avoid curtailment of their loads. In any event, we remind NRECA and TAPS that network service and point-to-point service were not designed to be identical and the rights and obligations of each type of customer need not be the same.[80] Comparability does not require the same service be made available to network customers and point-to-point customers; rather, the concept applies to the service taken for transmission provider's load by the transmission provider as compared to the service for network customer loads.

125. Additionally, we disagree with the conclusions that NRECA draws from its hypothetical scenario involving a network customer using secondary network service, a conditional firm customer, and the transmission provider taking power from the same generator. NRECA's assertion that the transmission provider will not curtail its own deliveries from the resource incorrectly assumes that the transmission provider will employ redispatch instead of something akin to conditional firm service. If the transmission provider is

[76] *Citing* Order No. 890 at P 925.

[77] Order No. 890–A at P 558.

[78] *Id.* P 559.

[79] Order No. 890 at P 1091.

[80] Order No. 890–A at P 559.

designating network resources using service analogous to conditional firm service, it will use a special protection scheme to curtail or limit the transmission service for the resource at the same time a network customer's secondary network service is curtailed. The conditional firm customer also should be curtailed about the same amount as the secondary network service customer because the conditional firm service, by definition, should be subject to curtailment at the secondary network service level during the forecast constraints.[81] NRECA's objection to conditional firm service is therefore based on a misunderstanding of the new service and the way that transmission providers use similar mechanisms to designate resources on their systems.

126. In Order No. 890–A, the Commission clarified that customers supporting upgrades have priority access to the capability created by those upgrades even if conditional firm customers earlier in the queue opt not to support upgrades.[82] The Commission also stated that ''any capacity created in excess of the service request should be allocated to those planning redispatch and conditional firm customers earlier in the queue, based on their order in the queue.'' [83] TAPS requests clarification of the former determination and objects to the latter determination. We clarify that customers supporting upgrades, whether through direct assignment or rolled-in pricing, will not have their upgrades sized based on the needs of planning redispatch and conditional firm customers that opt not to support upgrades. Upon further consideration, we grant rehearing of Order No. 890–A with regard to how excess capacity created by upgrades should be allocated among transmission customers.[84] We conclude that it is premature to make this determination given that the complicated series of events leading to such an allocation may never come to pass.[85] Should transmission providers encounter this series of events, they should file, prior to completion of the transmission upgrades, proposed tariff provisions to address the allocation of the transmission capacity.

b. Implementation of Planning Redispatch and Conditional Firm Service

(1) Characteristics of Service

127. The Commission reiterated in Order No. 890–A that both the transmission provider and reliability coordinator play a role in ensuring that adequate reliability is maintained when a customer uses third-party provided reliability dispatch. The Commission stated that this would entail review of redispatch plans submitted by the customers, coordination between the transmission provider and reliability coordinator, and signaling third-party generators when the redispatch is needed. It is the customer's ultimate responsibility, however, to ensure that any technical arrangements required by the reliability coordinator are in place in order to maintain reliability.

128. With regard to the conditional firm option, the Commission reiterated that transmission providers are allowed to add a risk factor to their calculation of annual curtailment hours to account for forecasting risks. The Commission clarified that the modeling of conditions to determine the number of non-firm curtailments for any conditional firm request should not incorporate unexpected events, such as hurricanes and ice storms.

Requests for Rehearing and Clarification

129. E.ON U.S. requests that the Commission clarify that the reliability coordinator oversees third-party-provided planning redispatch to ensure there is no conflict with reliability redispatch. E.ON U.S. also states, however, that third-party planning redispatch may have a negative impact on system reliability and ATC and, therefore, the transmission provider should not be completely separated from the third-party planning redispatch process. E.ON U.S. nonetheless argues that the reliability coordinator is in the best position to monitor the reliability impacts of third-party planning redispatch. E.ON U.S. notes that the reliability coordinator and transmission provider sometimes are separate entities, as in E.ON U.S.'s case where Tennessee Valley Authority is the reliability coordinator.

130. E.ON U.S. asks for further clarification that unexpected events that are not incorporated into the calculation of annual curtailment hours for a conditional firm customer do not impact the number of hours the customer can be curtailed. Although the Commission acknowledged in Order No. 890–A the need for flexibility in modeling various conditions, E.ON U.S. notes the Commission did not specify a level of appropriate risk factor to apply when making annual curtailment calculations and further found that unexpected events should not be included in calculating annual curtailment analysis.[86] E.ON U.S. requests that the Commission clarify whether unexpected events that are not included in the curtailment hours calculation also do not count towards the annual curtailment hours for customers taking conditional firm service.

Commission Determination

131. In Order No. 890, the Commission directed transmission providers to modify their OASIS sites to allow for posting of third-party offers for planning redispatch and to work with NAESB to develop the OASIS functionality and any necessary business practice standards to allow for third-party planning redispatch.[87] The Commission noted that provision of third-party planning redispatch required coordination between the customer, transmission provider and reliability coordinator, but determined that the customer bears the burden to ensure that the necessary contractual and technical arrangements are in place to maintain reliability.

132. We clarify in response to E.ON U.S. that the role of the reliability coordinator in coordinating third-party planning redispatch is very limited. The transmission provider should have primary responsibility for overseeing the coordination of third-party planning redispatch. For example, if third-party planning redispatch impacts ATC, as E.ON U.S. suggests, the transmission provider will make this determination and relay that information to the customer. It is important to distinguish reliability redispatch, for which reliability coordinators generally play a larger role, from planning redispatch. Planning redispatch is used to create additional transmission capacity in order to accommodate a request for

[81] We note, however, that network customer load is unlikely to be curtailed due to provision of reliability redispatch. In contrast, conditional firm customers' transactions are more likely to be curtailed during conditional periods because reliability redispatch is not required for point-to-point service.

[82] Order No. 890–A at P 584.

[83] *Id.*

[84] We note that the clarification provided in Order No. 890–A with regard to the allocation of excess capacity was not required to address the original issue raised by Southern. *See id.* P 571, 584.

[85] For this circumstance to present itself, all of the following, at a minimum, must occur: (1) Conditional firm or planning redispatch service is granted to a customer unwilling to support upgrades; (2) a customer seeking service over the same transmission capacity agrees to support transmission upgrades to secure its service; (3) the upgrade construction is completed; (4) the upgrades create additional capacity that the customer supporting the upgrades did not request; and (5) the conditional firm or planning redispatch customer will be taking service when construction is completed.

[86] *Citing* Order No. 890–A at P 588.

[87] Order No. 890 at P 1007.

long-term firm transmission service.[88] The transmission provider or third-party generation operator must plan to dispatch its generator(s) so that the requested transmission service, otherwise shown unavailable by the transmission provider's ATC model, may be granted. In comparison, reliability redispatch is used to relieve actual system constraints that would otherwise cause curtailment of network customer or transmission provider loads. While the reliability coordinator has a larger role to play in reliability redispatch, its role in coordinating third-party provision of planning redispatch is very limited.

133. With regard to our determination that unexpected events should not be incorporated into the analysis to determine the number of annual curtailment hours applying in any transmission service agreement, we clarify that whether such events impact the accounting for annual curtailment hours depends on the curtailment priority of the service at the time of the event. If an unexpected event occurs when the conditional firm customer is curtailed pursuant to a firm curtailment priority, then the curtailment will not count against the annual hours. In determining whether the annual conditional curtailments are met, transmission providers should count curtailments made when the service is otherwise conditional, *i.e.*, tagged with a secondary network curtailment priority, regardless of whether the curtailment occurred during an unexpected event.

(2) Pricing of Planning Redispatch

134. The Commission affirmed the determination in Order No. 890 that customers taking long-term point-to-point service with planning redispatch will have the option of paying either (i) the higher of (a) actual incremental costs of redispatch or (b) the applicable embedded cost transmission rate on file with the Commission or (ii) a fixed rate for redispatch to be negotiated by the transmission provider and customer and subject to a cap representing the total fixed and variable costs of the resources expected to provide the service. The Commission clarified that, in months in which generation-related payments are collected for planning redispatch, these payments should be treated as a revenue credit to offset the native load customers' fuel adjustment clause. In months in which the embedded cost rate of transmission is collected for planning redispatch, those revenues should be included in the numerator of the rate calculation as a revenue credit. The Commission stated that transmission providers may propose in an FPA section 205 filing any rate design change that may be necessary through an amendment to its formula rate or in a single rate case filing.

Requests for Rehearing and Clarification

135. E.ON U.S. and EEI request rehearing of the Commission's pricing provisions with respect to the crediting of transmission revenues from planning redispatch. Both repeat arguments that the Commission has forced transmission providers' native load to bear the cost of planning redispatch on behalf of point-to-point customers. They ask the Commission to grant rehearing to require that, when transmission revenues exceed the cost of planning redispatch on a monthly basis, only the amount of the excess transmission revenues should be credited against the cost of transmission service and the remainder should be credited against the fuel adjustment clause. In the alternative, EEI asks the Commission to clarify that, when the transmission revenues exceed the cost of redispatch, all of the revenues should be included as a credit in developing the transmission cost of service that is used to determine the transmission rate, and the generation redispatch costs should be included as a debit in determining the transmission cost of service and also should be credited against the fuel adjustment clause.

136. Southern repeats arguments made on rehearing of Order No. 890 that transmission providers should be able to charge planning redispatch customers the embedded costs of transmission as well as the generation-related costs of providing redispatch. Southern contends that it is unduly discriminatory and arbitrary and capricious to allow a transmission customer to be charged both the costs of generation redispatch and the embedded transmission rate when the redispatch is provided by a third party, but not when redispatch is provided by the transmission provider. In months in which redispatch costs are higher than the embedded cost rate, Southern contends that the transmission provider is similarly situated to a third party generator that provides redispatch because neither would receive transmission revenues for the additional transmission capability created by their redispatch. Southern therefore argues that the policy against ''and pricing'' is unduly discriminatory as applied to transmission providers and that this disparate treatment of transmission providers and third-party providers of planning redispatch does not withstand scrutiny.

137. Southern also repeats arguments that the Commission incorrectly concluded in Order No. 890–A that planning redispatch creates additional transmission capacity and does not take away firm service from native load and network customers. Southern contends that planning redispatch merely reallocates, rather than creates, transmission capability by forcing certain generators to run and others not to run, thereby changing power flows. Southern, raising a new argument, asserts that the provision of planning redispatch could result in reduced subsequent, later-queued sales of long-term or short-term transmission service that might have produced higher transmission revenues than the provision of planning redispatch. Southern adds that planning redispatch could prevent a network customer from designating a new network resource by taking all of the transmission capacity near a generating source. Southern therefore contends that the Commission's conclusion in Order No. 890–A that the provision of planning redispatch provides purely incremental service without effect to existing transmission capacity is arbitrary and capricious.

Commission Determination

138. The Commission grants clarification regarding the rate treatment of generation-related revenues and revenues from the embedded cost rate of transmission associated with planning redispatch. In Order No. 888, the Commission concluded that revenues from direct assignment of redispatch costs must be credited to the costs of fuel and purchased power expense included in the transmission provider's wholesale fuel adjustment clause.[89] This rate treatment is appropriate for all generation-related incremental costs, whether the customer pays the embedded cost transmission rate or the costs of planning redispatch in any particular month. Therefore, we direct that in months in which the embedded cost transmission rate is higher than the generation-related costs of providing redispatch, the revenues in excess of the generation-related costs should be credited against the costs of transmission service and the remaining revenues, those representing the monthly costs of reconfiguring generation resources, should be credited against the fuel adjustment clause.

139. We affirm our decision in Order No. 890–A to deny requests to depart

[88] *See* Order No. 890–A at P 603.

[89] *See* Order No. 888 at 31,740.

from our long-standing prohibition of ''and'' pricing for planning redispatch service first adopted in Order No. 888 and followed in Order No. 890.[90] In Order No. 890, the Commission modified pre-existing planning redispatch obligations and lessened the impact on transmission providers (and their customers) with the continuing support of many transmission providers, including Southern. The Commission also modified pricing provisions to allow for the comparison of monthly generation-related costs of planning redispatch to determine the applicable rate. In directing this monthly comparison, the Commission rejected the former provisions for basing the charge on a life of the contract comparison, concluding that it was appropriate to make planning redispatch service more attractive for transmission providers to provide.[91]

140. We also affirm, as the Commission did in Order Nos. 890 and 890–A, the determination in Order No. 888 that planning redispatch creates additional transmission capability.[92] We agree with Southern that provision of planning redispatch may have an impact on subsequent, later-queued requests to use the transmission grid. It is the nature of networked transmission grids that granting any firm point-to-point or network service will impact the ability of those seeking to use the system in the future. The impact of planning redispatch, or any other firm service, on subsequent uses of the grid does not provide a valid reason for lifting the long-standing prohibition on ''and'' pricing, nor does it undermine the determination in Order No. 888–A that planning redispatch creates additional transmission capacity. To the extent that Southern argues it could collect additional revenues from network customers' designation of additional resources were Southern not providing planning redispatch, we find this unconvincing as network customers are charged for service based on their load not the number of resources designated.

2. Rollover Rights

141. In Order No. 890–A, the Commission affirmed the decision in Order No. 890 to limit rollover rights to contracts with a minimum term of five years. The Commission rejected requests to condition application of the minimum five-year term on a demonstration that the relevant generation markets support five-year power supply contracts. The Commission explained that the purpose of its reform of the rollover policy is to align the rights and obligations of the customer with those of the transmission provider, not with the availability of supplies within a market or particular commercial practices in a region. The Commission noted that a point-to-point customer does not need to have a five-year power contract in order to secure a five-year transmission service contract and that the length of the network customer's service agreement, not the length of the power contract supporting a network resource designation, determines whether a customer is eligible for rollover.

142. The Commission also affirmed the decision in Order No. 890 not to eliminate the requirement to match competing requests in order to retain rollover rights. With regard to the effectiveness of the rollover reforms, the Commission acknowledged that requiring a five-year contract term for pending transmission service requests could cause significant disruption to those transmission customers already in the transmission queue at the time of the effective date of Order No. 890. The Commission therefore revised section 2.2 of the *pro forma* OATT to provide that the current one-year contract commitment requirement will continue to apply to all transmission service requests that were in a transmission provider's transmission queue as of the effective date of the reforms adopted in Order No. 890 (*i.e.*, July 13, 2007).

Requests for Rehearing and Clarification

143. Entergy objects to the Commission's statement in Order No. 890–A that the term of the network customer's underlying service agreement establishes whether a network service reservation is eligible for rollover rights, rather than the term of the relevant designated network resources.[93] Entergy argues that this determination is an unexplained departure from existing rollover policy providing that a network service reservation's eligibility for a rollover is based on the term of the underlying network resource.[94] Entergy argues that network customers most often execute long-term service agreements, sometimes up to as many as 30 years in length, that act as umbrella agreements under which network customers designate and undesignate different network resources as needed to serve network load. Entergy explains that the transmission provider studies these reservations as they are submitted and, if they are deliverable to the relevant network load on a firm basis, then they are designated as network resources.

144. Entergy argues that granting rollover rights based solely on the term of a network service agreement, rather than the term of the network resource designation, would effectively ignore the firm deliverability requirement underlying all network resources, allowing a network customer to execute a multi-year service agreement and obtain rollover rights even though it actually may have only designated network resources for as little as one day. Entergy contends that this is not the intent of allowing transmission customers to designate network resources on a short-term basis and constitutes bad transmission policy and undermines reliability.

145. Cargill objects to the revision of section 2.2 of the *pro forma* OATT requiring existing customers to match the longest-term competing request in order to rollover service. Cargill contends that the Commission in Order No. 890 determined that a rollover customer must agree to another five-year contract term or match any longer-term competing request in order to be eligible for a subsequent rollover,[95] but imposed no similar requirement when exercising a rollover right when a subsequent rollover is not desired. Cargill argues that the new requirement to match the longest-term competing request in order to roll over service violates the first-come, first-served principles affirmed in Order No. 890. Cargill suggests, for example, that one potential customer could submit a competing request well in advance of the incumbent's rollover, followed by a second longer-term competing request submitted by another potential customer closer in time to the incumbent's rollover. Cargill contends that the revision to section 2.2 would allow the second customer to effectively preempt the earlier submitted competing request simply because both are vying for capacity subject to the incumbent's rollover right.

146. Cargill argues that the revised language of section 2.2 therefore violates the first-come, first-served principle of section 13.2 of the *pro forma* OATT and Commission precedent regarding the application of rollover rights,[96] nullifying the benefit of being the first competitor to submit a competing

[90] *See* Order No. 890 at P 1028.

[91] Order No. 890 at P 1025.

[92] Order No. 888–A at 30,267; Order No. 890 at P 1028; Order No. 890–A at P 602, n.241.

[93] *Citing* Order No. 890–A at P 645.

[94] *Citing Wis. Pub. Power, Inc.* v. *Wis. Pub. Serv. Corp.,* 84 FERC ¶ 61,120, at 61,659 (1998) (*WPPI*).

[95] *Citing* Order No. 890 at P 1231.

[96] *Citing Tenaska Power Services Co.* v. *Midwest ISO,* 106 FERC ¶ 61,230 at P 28, *reh'g denied,* 107 FERC ¶ 61,308 (2004) (*Tenaska*).

request for capacity subject to a rollover right. Cargill contends that the Commission provided no justification in Order No. 890–A for revising its rollover policy to require a customer to match the longest-term competing request in order to rollover its service. Cargill also argues that the Commission provided no notice or opportunity to comment on this change in Commission policy.

147. TranServ requests clarification of the Commission's determination regarding the application of the new rollover policies to customer requests queued prior to the effective date of the reforms adopted in Order 890. TranServ states that there is continued confusion over exactly when customers would be required to request long-term service for five years or longer to be granted rollover rights. TranServ contends that customers submitting long-term service requests after July 13, 2007, but prior to the effectiveness of revised section 2.2 of the OATT, are not granted the right to rollover service under the previous one-year term rollover policy. TranServ suggests that it may be more appropriate to allow transmission customers that submitted requests for one year or longer after July 13, 2007, but executed a service agreement prior to the effective date of the revised section 2.2, to also be allowed to operate under the one-year term rollover policy through their first rollover date.

Commission Determination

148. The Commission affirms the determination in Order No. 890–A that the length of a network customer's network service agreement, not the length of a power contract supporting a network service agreement, determines whether the network customer is eligible for rollover rights.[97] A network customer's eligibility for rollover rights is distinct from its ability to rollover a particular resource designation. In order for a network customer to qualify for rollover rights, it must have a network service agreement that satisfies the minimum term necessary for rollover rights. The network customer may then continue to designate and undesignate resources pursuant to that service agreement, subject to the availability of adequate transmission capability to accommodate the request.

149. This does not, as Entergy argues, depart from Commission precedent regarding the network customer's eligibility for rollover rights. At issue in *WPPI* was whether a network customer is required to compete with other firm uses of the system in order to continue its resource designation at the time of rollover.[98] In considering that issue, the Commission first addressed whether rollover rights are available to network customers, concluding that all network customers of the transmission system are long-term users of the system and, therefore, meet the minimum term required to qualify for rollover rights. That determination was appropriate when the one-year contract commitment was in effect, since network service agreements are not short-term in nature. However, when the Commission extended the minimum contract commitment for rollover rights from one year to five years, it was necessary to state more clearly that a network customer's threshold eligibility for rollover rights is linked to the term of its network service agreement.

150. We disagree that this determination undermines the ability of the transmission provider to study the potential impact that future resource designations may have on the system. Although a network customer rolling over its network service may match a competing point-to-point request by extending its network service agreement rather than the power contract supporting the resource designation, the Commission specifically noted that any subsequent request to designate a network resource would remain subject to the requirements of the *pro forma* OATT, as with any other request to designate a network resource.[99] The transmission provider will therefore continue to be able to consider the deliverability of a particular resource at the time of designation. We note that this does not relieve the transmission provider of its obligation under section 28.2 of the *pro forma* OATT to plan, construct, operate and maintain its transmission system in order to provide the network customer with network service over the transmission system.

151. We agree with Cargill, however, that the revisions to the language of section 2.2 of the *pro forma* OATT adopted in Order No. 890–A do not properly reflect the obligation of customers rolling over their service to match competing requests for service. Section 2.2 of the Order No. 888 *pro forma* OATT required customers rolling over their service to accept a contract term for their new service at least as long as that offered by another potential customer.[100] This obligation was independent of the separate requirement for the rollover customer to request a term of at least one year in order to be eligible for rollover rights on the new service. In amending section 2.2 in Order No. 890, the Commission inadvertently misstated the matching requirement as requiring the customer to match the longer of the term of a competing request or five years in order to roll over its service.[101] That was incorrect, as the requirement to commit to at least five years of service is relevant only to whether the new service has rollover rights, not to whether the customer may roll over its existing service.

152. The Commission corrected this misstatement in Order No. 890–A by amending section 2.2 to require customers rolling over the service to match the longest competing request.[102] As Cargill points out, the Commission's reference to the longest-term competing request could require a rollover customer taking long-term service to match the length of any competing long-term request. Under the Commission's existing precedent regarding section 2.2 of the *pro forma* OATT, however, there would be only one potential competitor for rollover customers seeking long-term service, *i.e.*, the first customer in the queue requesting competing service.[103] We did not intend to modify this policy and, therefore, revise the language of section 2.2 to require customers rolling over their service to accept a contract term at least equal to a competing request. Any such competing request should be identified by the transmission provider consistent with the reservation priorities stated in the *pro forma* OATT.

153. We affirm the decision in Order No. 890–A to continue to apply the current one-year contract commitment requirement to all transmission service requests that were in the transmission provider's transmission queue as of the effective date of the reforms adopted in Order No. 890, *i.e.*, July 13, 2007.[104] This does not mean, as TranServ implies, that the five-year contract

[97] *See* Order No. 890–A at P 645.

[98] *See WPPI,* 84 FERC at 61,659.

[99] *See* Order No. 890–A at P 666, n.264. With regard to competing network resource designations, the Commission affirmed in Order No. 890–A that the network customer seeking rollover must match the term of the competing network resource power contract, consistent with *WPPI. See* Order No. 890–A at P 666.

[100] *See* Order No. 888 at 31,665.

[101] *See* Order No. 890 at Appendix C, *pro forma* OATT section 2.2.

[102] *See* Order No. 890–A at P 695 (''An existing customer may rollover its service for a term of less than five years, but will not then retain a rollover right for this service. We revise section 2.2 of the *pro forma* OATT to make these requirements clear.'').

[103] *See Tenaska,* 106 FERC ¶ 61,230 at P 48; *see also Cargill Power Marketers, LLC* v. *Southwest Power Pool, Inc.,* 122 FERC ¶ 61,068 (2008) (distinguishing the ''equal to a competing request'' language of section 2.2 of the *pro forma* OATT from the ''longest confirmed competing request'' language of SPP's tariff).

[104] *See* Order No. 890–A at P 691.

commitment requirement applies to a customer executing a service agreement after that date, but prior to the effectiveness of rollover reforms for the particular transmission provider. The Commission reiterated in Order No. 890–A that the previously existing rollover provisions will remain in effect for the transmission provider until such time as the Commission accepts the transmission provider's Attachment K compliance filing.[105] We therefore agree with TranServ that the one-year contract commitment requirement continues to apply to any customer executing a service agreement prior to the effective date of the transmission provider's revised section 2.2, regardless of when the customer's service request was submitted.

154. Finally, we take this opportunity to clarify the statement in Order No. 890–A that the transmission provider may file the revised rollover language only after the transmission provider's Attachment K planning process is accepted by the Commission.[106] Transmission providers may file the revised rollover language adopted in this proceeding at any point after the Commission has accepted the transmission provider's Attachment K compliance filing, even if such acceptance is subject to further compliance obligations, unless otherwise provided by the Commission in the order addressing the Attachment K compliance filing. The effective date of that revised tariff language should be commensurate with the date of the filing containing the revised language.

3. Acquisition of Transmission Service

a. Reservation Priority

155. The Commission confirmed in Order No. 890–A that longer duration service requests will continue to have priority over shorter duration service requests, with pre-confirmation serving as a tie-breaker for requests of equal duration. Order No. 890–A also affirmed the decision to limit priority for pre-confirmation status to short-term firm and long-term non-firm requests for service. The Commission also revised sections 1.39, 17.2 and 18.2 of the *pro forma* OATT to make clear that pre-confirmation service should be available to all eligible customers seeking short-term firm and non-firm transmission services.

Requests for Rehearing and Clarification

156. Schedule 20A Service Providers request rehearing of the Commission's decision to revise the *pro forma* OATT to allow pre-confirmation by eligible customers that have not yet executed service agreements. They argue that this revision is inconsistent with how service is reserved on the Phase I/II HVDC–TR transmission system operated by ISO New England and Hydro-Quebec TransEnergie. The Schedule 20A Service Providers state that they have therefore requested approval of a variation from the *pro forma* OATT in their October 11, 2007 compliance filing to accommodate their reservation practices.

157. The Schedule 20A Service Providers also argue more generally that OASIS is not set up to take pre-confirmed applications and, therefore, there is no means by which an eligible customer that is not yet a transmission customer can request pre-confirmed service. They argue that limiting pre-confirmation status to transmission customers does not preclude new customers from seeking service on an equal footing since the obligation to execute a service agreement does not impose an undue burden. To the contrary, they argue that substantial implementation difficulties would arise if transmission providers are forced to recognize pre-confirmation status for eligible customers that do not have access to OASIS. The Schedule 20A Service Providers therefore ask the Commission to grant rehearing to provide that the modifications to sections 1.39, 17.2 and 18.2 of the *pro forma* changes are not necessary or appropriate when applications are not a means for requesting service through OASIS.

Commission Determination

158. The Commission affirms the decision in Order No. 890–A to allow eligible customers to submit pre-confirmed requests for transmission service.[107] The ability to submit pre-confirmed requests should not be limited to existing short-term and non-firm transmission customers. To the extent this policy conflicts with the operations of any given transmission provider, as the Schedule 20A Service Providers suggest, the transmission provider may seek a variation from the terms and conditions of the *pro forma* OATT as necessary to accommodate its operations. We note, for example, that the Commission approved the variation requested by the Schedule 20A Service Providers in Docket No. ER08–54–000.[108]

b. Right of First Refusal and Preemption

159. The Commission affirmed in Order No. 890–A the decision not to change the first-come, first-served nature of the reservation process and the right of first refusal. In response to comments that administration of the right of first refusal has the potential to create complicated scenarios, such as when scarce capacity exists, the Commission declined to expand upon the language of the *pro forma* OATT to account for every factual scenario that could arise. The Commission recognized that certain unique cases can present difficult allocation issues, but concluded that such cases arise infrequently and that sections 13.2 and 14.2 of the *pro forma* OATT provide adequate guidance for the vast majority of requests.

Request for Rehearing and Clarification

160. Duke asks the Commission to clarify that a transmission provider need not offer a right of first refusal if it cannot be done in a single offering to other eligible customers. Duke argues that it is unduly complicated to offer a right of first refusal when the offer triggers other transmission customers' rights of first refusal. If it is the Commission's intention that the transmission provider offer cascading rights of first refusal, Duke requests guidance that can be used by NAESB to develop adequate business practices.

Commission Determination

161. The Commission declines to address in this rulemaking proceeding how transmission providers should resolve complicated and fact-specific scenarios such as the cascading rights of first refusal described by Duke. Sections 13.2 and 14.2 of the *pro forma* OATT provide adequate guidance for transmission providers to fairly administer the vast majority of competing requests, including priorities for determining which reservations or requests trump one another as well as the timeframes for eligible customers to respond to competing requests. As the Commission explained in Order No. 890–A, we expect that more complex circumstances such as those suggested by Duke will be relatively limited and, therefore, are best addressed on a case-by-case basis.[109] Transmission providers remain free, however, to develop through the NAESB process standard procedures for processing complicated request scenarios.

[105] *See id.* P 684.

[106] *See id.*

[107] Order No. 890–A at P 790.

[108] *See ISO New England, Inc.,* 123 FERC ¶ 61,133 (2008).

[109] *See* Order No. 890–A at P 816.

4. Designation of Network Resources

162. In Order No. 890–A, the Commission clarified certain determinations regarding the qualification, documentation and undesignation of resources by a network customer. A number of petitioners request additional rehearing and clarification regarding these issues. We address each of these issues in turn.

a. Qualification as a Network Resource

(1) LD Contracts

163. In Order No. 890, the Commission affirmed its existing policy that a power purchase agreement may be designated as a network resource provided it is not interruptible for economic reasons, does not allow the seller to fail to perform under the contract for economic reasons, and requires the network customer to pay for the purchase. The Commission concluded that power purchases with a firm liquidated damages (LD) provision may be eligible for designation as a network resource if the contract obligates the supplier, in the case of interruption for reasons other than force majeure, to make the aggrieved buyer financially whole by reimbursing them for the additional costs, if any, of replacement power. The Commission found that the ''make whole'' LD provisions in EEI's Master Power Purchase and Sale Agreement's Firm LD product (EEI's Firm LD Product) and the WSPP Service Schedule C agreement satisfy this requirement. In Order No. 890–A, the Commission affirmed its finding that the make whole LD provisions in the EEI Firm LD Product and the WSPP Service Schedule C agreement are sufficiently firm to make those agreements eligible for designation as a network resource.

Requests for Rehearing and Clarification

164. Duke asks the Commission to confirm that firm LD contracts that are not strictly limited to interruption for reliability reasons, such as the EEI Master Agreement Firm LD Product, no longer can be designated as network resources in the future. Duke contends that the Commission's statement in Order No. 890–A that ''the make whole LD provisions in the EEI firm LD product and WSPP Schedule C agreement are sufficiently firm to make those agreements eligible for designation as a network resource'' implies that LD contracts with make-whole provisions may serve as network resources, even if not coupled with provisions that also restrict interruption for reasons other than reliability.[110] Duke requests clarification that both a make-whole provision and a restriction on the grounds for interruption, such as the restriction added to the WSPP Schedule C agreement, are required for an LD contract to be eligible for network resource status.

Commission Determination

165. The Commission reiterates that a power purchase agreement must meet all of the requirements for designation as a network resource in order to be designated by the network customer or transmission provider's merchant function. The fact that a firm LD contract with a make whole provision is sufficient to satisfy one aspect of these requirements does not mean that it can be designated as a network resource. The remaining requirements must also be met.[111] As the Commission made clear in Order No. 890, one of those other requirements is that such contracts expressly prohibit interruption for reasons other than reliability.

166. We disagree with Duke that the EEI firm LD product fails to prohibit interruptions for reasons other than reliability. Duke raised a similar argument in its NOPR comments, suggesting that the EEI firm LD product allows power to be interrupted for any reason. The Commission expressly disagreed, finding that power cannot be interrupted for economic reasons under the EEI firm LD product and that the supplier is obligated to provide power except in cases of force majeure.[112] Duke is therefore mistaken in implying that the EEI firm LD product is not eligible for designation under Commission policy because of its interruptibility.

(2) Off-System Resources

167. In Order No. 890, the Commission modified section 29.2(v) to state more clearly the information that must be provided for the designation of off-system network resources. Among other things, the network customer must provide its transmission arrangements on the external transmission system(s). In Order No. 890–A, the Commission clarified that this requirement applies to the transmission leg from the resource being designated to the transmission provider's transmission system. If an off-system power purchase is sufficiently firm to satisfy the designation requirements, the transmission provider need not be concerned with the upstream transmission leg(s) from the generator(s) to the point where the buyer takes title of the firm power. The Commission concluded that the firm contract itself is the resource being designated and, therefore, it is not necessary to demonstrate the firmness of the upstream transmission.

Requests for Rehearing and Clarification

168. Entergy requests clarification that customers designating an LD contract as an off-system network resource must still arrange a firm transmission path from the generator to the transmission system in order for the purchase to qualify as a network resource, regardless of where title of energy and/or capacity actually passes. If the point where title to energy and/or capacity underlying a network resource transfers is now relevant, Entergy argues that the Commission at a minimum should clarify how that information should be relayed to the transmission provider in the network customer's attestation and the procedures, if any, that the transmission provider must undertake in order to ensure the veracity of information provided regarding title. Entergy argues that elimination of the requirement to support an LD contract with a firm transmission path from the source generator would violate the long-standing obligation that third-party transmission arrangements delivering purchases be firm and depart from prior governing precedent without a reasoned explanation.[113]

Commission Determination

169. The Commission affirms the determination in Order No. 890–A that the requirement in section 29.2(v) of the *pro forma* OATT to identify the transmission arrangements on external systems applies only to the transmission leg from the resource being designated to the transmission provider's transmission system.[114] If an off-system power purchase is sufficiently firm to satisfy the designation requirements, then the transmission provider need not be concerned with the upstream transmission leg(s) from the generator(s) to the point where the buyer takes title of the firm power. As the Commission explained in Order No. 890–A, the resource being designated is the firm

[110] *Citing* Order No. 890–A at 832.

[111] *See, e.g., id.* P 864 (''The Commission did not state that *every* firm LD contract can be designated as a network resource, but rather that they are eligible for designation.'') (emphasis in original); Order No. 890 at n. 869 and P 1460 (finding that the then current WSPP Schedule C agreement, while meeting requirements for LD provisions, otherwise allows interruptions for reasons other than reliability and, as a result, would not be eligible for designation as a network resource).

[112] Order No. 890 at P 1452.

[113] *Citing WPPI,* 84 FERC at 61,660.

[114] *See* Order No. 890–A at P 867.

contract. The network customer therefore must provide to the transmission provider information regarding its transmission arrangements only from the point that the network customer takes title to the power to the point of delivery to the transmission provider's transmission system, to the extent such points are distinct.

170. We disagree that this determination conflicts with the Commission's decision in WPPI. In that case, the Commission clarified that the transmission provider could require network customers to document compliance with specific requirements for obtaining tariff service and that such documentation might include contractual materials.[115] The Commission did not address whether those requirements include the requirement to provide information regarding transmission arrangements between a designated power purchase agreement and the source generator. The Commission concluded in Order No. 890–A that they do not, given that the designated purchased power contract is itself firm.[116] Entergy provides no justification for granting rehearing of this determination, which is well-founded in the record of this proceeding.[117]

171. We disagree that a network customer must separately identify in its attestation the location at which the network customer takes title of purchased power. Section 30.2 of the *pro forma* OATT requires the network customer to attest that, among other things, the network customer owns or has committed to purchase the resource being designated. Implicit in the identification of a resource, then, is the requirement that the network customer has or has committed to acquire title to the resource at that location. As the Commission explained in Order No. 890–A, it is the responsibility of the network customer to assure that the requirements of the *pro forma* OATT are satisfied prior to requesting the designation of a network resource and executing the attestation.[118] Review of the network customer's power supply contracts by the transmission provider is therefore not necessary. Submitting an attestation with incorrect information as to its ownership of purchased power would violate section 30.2, subjecting the network customer to potential penalties.[119]

b. General

172. In Order No. 890–A, the Commission affirmed the decision to allow off-system resources supported by conditional firm point-to-point service to be designated as network resources. The Commission declined to require a network customer with a designated off-system resource supported by conditional firm service to obtain reserves or backup resources to cover the periods when the resource supported with conditional firm point-to-point transmission service might not be delivered. The Commission explained that, in the event conditional firm service is curtailed, the network customer would be required to serve its network load from other resources, just as when the transmission provider curtails the network customer's use of secondary network service. The Commission reiterated that it is not the responsibility of the transmission provider to ensure that the network customer has sufficient resources to meet its load.

Requests for Rehearing and Clarification

173. Duke argues that the Commission, in its finding that transmission providers are not to serve as provider of last resort for their network customers, did not explain how transmission providers can realistically avoid this role or how transmission providers or their merchant function should be compensated in the likely event that the transmission provider will continue to provide power to network customers that are short of energy resources. Duke argues that several of the Commission's policies on designation of network resources create or exacerbate risks that network customers may at times be short of resources. First, Duke cites the Commission's decision to allow a network customer to deliver power from off-system network resources using conditional firm point-to-point service, which it argues may be curtailed with much greater frequency than network resources supported by firm point-to-point service. Second, Duke cites the Commission's rejection of requests to allow transmission providers to verify that a network resource is supported by firm transmission service upstream of the location of the purchase. Third, Duke cites the Commission's policy of allowing power sales contracts that permit interruption by the seller in order to reliably serve native load to qualify as network resources, arguing that such policy may permit double-counting of resources. Fourth, Duke states concern regarding the grandfathering of existing designations for resources that may be curtailed by the seller for any reason. Finally, Duke argues that the Commission's attestation requirement will not adequately curb the practice of designating unqualified resources as network resources due to a lack of audit resources.

174. Duke requests clarification that transmission providers or their merchant functions may make section 205 filings to provide for penalty rates for network customers that fail to provide enough energy to serve load because network resources were not delivered for reasons that could be expected. Duke explains that the most severe penalty for energy imbalance service under Schedule 4, 125 percent of incremental cost, is not particularly onerous and thus may be insufficient to motivate appropriate behavior. Duke suggests that a rate of two times system incremental costs would be appropriate.

Commission Determination

175. The Commission reiterates that it is not the responsibility of the transmission provider to ensure that the network customer has sufficient resources to meet its load. The Commission has made clear that the requirements for the designation of network resources are not intended to replace or replicate resource adequacy requirements, which impose distinct obligations on the transmission provider and its customers.[120] To that end, the Commission has determined that a resource's qualification for network resource status does not necessarily mean that the resource can or should be counted as firm capacity for the purposes of resource adequacy.[121] We therefore disagree with Duke that the Commission's policies regarding the designation of network resources creates or exacerbates risks that inadequate resources will be available to meet network load.

176. We decline to address Duke's suggestion that increased penalty rates may be appropriate for network customers that fail to provide enough energy to serve network load because their network resources were not delivered for reasons that could be expected. The Commission has already made clear that it will consider on a case-by-case basis proposals to adopt enhanced imbalance penalties subject to

[115] *See WPPI,* 84 FERC at 61,660.

[116] *See* Order No. 890–A at P 867.

[117] *See id.* P 854–55.

[118] *See id.* P 921.

[119] *See* Order No. 890 at P 1523–25. As we note below, the Commission can audit a network customer's compliance with a transmission provider's OATT in a variety of circumstances.

[120] *See* Order No. 890 at P 1584; Order No. 890–A at P 835, 837.

[121] *Midwest Indep. Transmission Sys. Operator, Inc.,* 122 FERC ¶ 61,283, at PP 274–76 (2008), *reh'g pending.*

a showing that they are necessary under the circumstances.[122]

c. Documentation for Network Resources

177. In Order No. 890, the Commission required network customers and the transmission provider's merchant function to include a statement with each application for network service or to designate a new network resource that attests, for each new network resource identified, that (1) the transmission customer owns the resource, or has committed to purchase the resource pursuant to an executed contract or where execution of a contract is contingent upon the availability of transmission service, and (2) the resource comports with the requirements for designated network resources. The Commission stated that these attestations are not required to be submitted until the service request is confirmed. In Order No. 890–A, the Commission affirmed the requirement that each network customer designating network resources must submit an attestation using the language set forth in sections 29.2 and 30.2 of the *pro forma* OATT.

178. The Commission also affirmed the decision to require each transmission provider to verify that third-party transmission arrangements used to deliver an off-system designated network resource to the transmission provider's system are firm. The Commission explained that, under normal circumstances, this verification requirement should not present a significant burden for the transmission provider because it only requires review of the transmission arrangements from the designated network resource to the transmission provider's system.

Requests for Rehearing and Clarification

179. NRECA and TDU Systems seek confirmation that network customers are not required to submit attestations until the customer confirms the service request on OASIS. These petitioners state that clarification is necessary because some of their members have been told by transmission providers that this attestation is required at the time of application for service, despite the Commission's guidance in the preambles of both Order Nos. 890 and 890–A.[123] NRECA and TDU Systems contend that the language of section 29.2 of the *pro forma* OATT is inconsistent with the preamble and should be amended because courts have held that language in the preamble of a regulation is not controlling over the language in the regulation itself.[124] If the Commission actually intended to require the attestation at the application stage, they request rehearing on the grounds that a network customer cannot be expected to commit to purchase a resource before the resource has even been studied by the transmission provider.

180. Duke states continued concern regarding the effectiveness of the attestation requirement submitted by network customers that are not subject to the Commission's ratemaking jurisdiction. Duke maintains that, while the Commission plainly has the authority to penalize nonjurisdictional entities that submit false attestations, the Commission has never routinely audited such entities. Unless the Commission begins an audit program that routinely reviews the designation attestations and supporting contracts of nonjurisdictional network customers, Duke argues that noncompliance could be viewed as nearly risk-free. Duke contends that this would be inequitable given that merchant functions of transmission providers are routinely audited. If the Commission lacks the resources to begin routine, random auditing of nonjurisdictional entities' attestations, Duke suggests that the Commission consider permitting market monitors or independent entities to at least perform spot checks and report to the Commission if a questionable attestation has been made.

181. TranServ requests clarification of the means by which a transmission provider may comply with its obligation to verify the firmness of off-system transmission service to deliver designated network resources to the transmission provider's system. TranServ requests that only long-term designations of network resources should require an up-front verification of any off-system transmission arrangements. For shorter-term designations, TranServ suggests that it is sufficient for the transmission provider to verify that all transmission arrangements upstream of the provider's system are supported by firm transmission at the time the transactions from the resource are scheduled. TranServ contends that this would allow more flexibility on the part of the transmission customer in terms of balancing the use of a portfolio of point-to-point transmission rights, while still providing the necessary assurance to the transmission provider that the designated resource is backed by firm transmission up to the point of delivery to the provider's system.

Commission Determination

182. The Commission grants rehearing to more accurately state the requirement to provide an attestation supporting the designation of network resources pursuant to sections 29.2(viii) and 30.2 of the pro forma OATT. In order to designate a network resource, section 30.7 of the Order No. 888 pro forma OATT required each network customer to demonstrate that (i) it owns or has committed to purchase generation pursuant to an executed contract or (ii) execution of a contract is contingent upon the availability of transmission service in order to designate a generating resource. In Order No. 890, the Commission adopted the attestation requirement as the means by which the network customer can make this demonstration, revising sections 29.2 and 30.2 accordingly. We affirm this requirement, consistent with the network customer's obligations under section 30.7, and grant rehearing of the Commission's statements in this proceeding indicating that the attestation can instead be submitted at the time a resource designation is confirmed, rather than requested.

183. We disagree with NRECA and TDU Systems that a customer submitting an attestation pursuant to section 29.2(viii) or 30.2 of the *pro forma* OATT must commit to purchase the resources for which designation is requested irrespective of the outcome of the network service request. Consistent with section 30.7, a network customer may attest that execution of a contract is contingent upon the availability of transmission service under Part III of the *pro forma* OATT. Network customers are therefore not required to commit to purchasing a resource prior to submitting a request to designate that resource.

184. In response to Duke, we disagree that it is necessary to establish audit programs specifically for nonjurisdictional entities in order to verify attestations supporting their network resource designations. The Commission could audit any network customer's compliance with a transmission provider's OATT in a variety of circumstances. For instance, network customers (including nonjurisdictional entities) and the transmission provider's merchant function could be asked to support selected attestations during audits of the transmission providers to whom the

[122] Order No. 890 at P 676.

[123] *Citing* Order No. 890 at P 1531; Order No. 890–A at P 909.

[124] *Citing Wyoming Outdoor Council* v. *U.S. Forest Serv.,* 165 F.3d 43, 53 (D.C. Cir. 1999) (*citing Jurgensen* v. *Fairfax County, Va.,* 745 F.2d 868, 885 (4th Cir. 1984)) and *Rowell* v. *Andrus,* 631 F.2d 699, 705 (10th Cir. 1980).

attestations were submitted. Thus, no special audit programs are necessary.

185. We deny TranServ's request that the firmness of transmission service used to deliver short-term designations of network resources be verified at the time of scheduling, rather than at the time of designation. The time of designation is when the transmission provider determines that power from a network resource is deliverable to associated network load and, therefore, it is appropriate to require the verification of related transmission service at that time.

d. Undesignation of Network Resources

(1) Risk to ATC Rights

186. In Order No. 890, the Commission clarified that a request for termination of a network resource that is concurrently paired with a request to redesignate that resource at a specific point in time will not result in the network customer permanently forfeiting rights to use that resource as a designated network resource. Any change in ATC that is determined by the transmission provider to have resulted from the temporary termination shall be posted on OASIS during this temporary period. The Commission directed transmission providers to develop OASIS functionality and, working through NAESB, business standards describing the procedures for submitting temporary terminations of network resources, including the identification of any related transmission service requests to be evaluated concomitantly with the request for temporary termination.

Requests for Rehearing and Clarification

187. TranServ requests clarification of the sequence of events and requirements for releasing transmission capability as a result of a customer's request to undesignate one network resource and replace it with an alternate resource. TranServ argues that the process should be deemed similar in nature and treatment to a redirect of firm point-to-point service or a network service request related to the temporary termination of a resource designation, which must be evaluated concomitantly.[125] Although TranServ acknowledges that network customers should not be ''first-in-line'' for ATC made available from an undesignation, it contends that transmission providers should evaluate simultaneous transmission service requests with the knowledge that both resource designations will not run concurrently.

[125] *Citing* Order No. 890 at P 1541.

Commission Determination

188. In Order No. 890, the Commission directed transmission providers to evaluate as a single request a request for temporary undesignation and related requests for transmission service. Transmission providers were therefore directed to develop, working through NAESB, business practices allowing for electronic identification of related transmission service requests to be evaluated concomitantly with the request for temporary undesignation. This was appropriate in light of the Commission's decision to allow network customers to temporarily undesignate their network resources without forfeiting the right to use the resource at a specified point in the future, provided they pair the temporary undesignation with a request to redesignate the resource.

189. We find that similar procedures for permanent undesignations of network resources are unnecessary given the transmission provider's obligation to consider clustering transmission service requests at the request of customers. If a network customer or the transmission provider's merchant function wishes for the transmission provider to take into consideration the effect of a request to terminate a network resource on a concomitant request to designate another network resource, it may request the transmission provider to cluster the requests. As TranServ acknowledges, this will not alter the priority of the network customer or the transmission provider's merchant function with regard to any ATC that may be made available by undesignating the network resource.

(2) System Sales

190. In Order No. 890–A, the Commission clarified the circumstances in which a network customer must undesignate its resources on a unit-specific basis when making a system sale. The Commission determined that portions of the seller's individual network resources supporting a sale of system power do not need to be undesignated so long as the system sale is itself designated as a network resource by the buyer. Instead, the seller should undesignate a portion of its system equal to the amount of the system sale, but which is not attributed to any specific generators. If the system sale is not designated as a network resource by the buyer, the seller must submit undesignations for each portion of each resource supporting the third-party sale. The Commission stated that most, if not all, system sales sourced from designated network resources are themselves designated as network resources by the buyer and, therefore, few system sales would require undesignation on a unit-by-unit basis.

Requests for Clarification and Rehearing

191. Several petitioners request rehearing and clarification of the requirement that generating units supporting a sale of system power that is not designated as a network resource by the buyer must be undesignated by the seller on a unit-by-unit basis.[126] Petitioners generally argue that a seller should not be required to undesignate individual resources used to support any system sale of power.

192. Various petitioners argue that requiring unit-by-unit undesignations by sellers for system sales to buyers who use point-to-point service to deliver the power to their load has certain undesirable effects, including increased cost and administrative burden for system sales, increased tendency of sellers to discriminate against point-to-point buyers, foreclosed opportunities for transactions, decreased liquidity, decreased revenues for sellers, decreased efficiency in transmission use, and further discouragement of network customers from making system sales that do not qualify for designation by the buyer, such as sales into day-ahead RTO markets.[127]

193. Deseret argues that an LSE's access to system sales, rather than a unit-specific or hub-based sales, further assures delivery of a product necessary to fulfill native load requirements. Deseret contends that limiting the flexible undesignation of network resources supporting system sales to instances where the buyer designates the purchase as a network resource is therefore contrary to section 217 of the FPA. Deseret also argues that the Commission's policy unduly preferences buyers that designate the purchase as a network resource. Deseret contends that the Commission has failed to justify why system sales to point-to-point customers are more problematic than sales to network customers, even where the two buyers would be using the resource in the same way. Southern agrees, arguing that there is no support in the record for the Commission's determination regarding the undesignation of resources used for system sales.[128] Duke states similar concerns, noting that all commenters

[126] *E.g.,* Deseret, Duke, EEI, NRECA, Pacific Northwest IOUs, Southern, and TranServ.

[127] *E.g.,* Deseret, NRECA, Southern, and TAPS.

[128] *Citing National Fuel Gas Supply Corp.* v. *FERC,* 468 F.3d 831 (D.C. Cir. 2006).

addressing the issue took the opposite position with regard to slice-of-system sales, *i.e.*, that in all cases the slice, not units, should be undesignated.

194. Several petitioners challenge the Commission's statement that buyers taking advantage of system purchases are almost always network customers.[129] Deseret explains that, in part due to the remote nature of its loads and the composition of the integrated transmission grid in its region, it is more efficient, both from a cost perspective and a transmission use perspective, for LSEs like itself to serve their loads using point-to-point service, either pursuant to an OATT or under pre-Order No. 888 transmission arrangements. NRECA and TAPS similarly argue that some LSEs rely on point-to-point service instead of network service to serve their native loads. Pacific Northwest IOUs state that the majority of system purchases they make are not designated as network resources, due at least in part to the fact that many purchases are imported for short-term balancing purposes where flexibility is important. Southern agrees that the bulk of system purchases occur in the short-term markets and suggests that buyers may simply not want to bother with designating the purchases as network resources.

195. TAPS argues that the Commission's assumption that unit-specific undesignations will rarely be required supports elimination of the unit-specific undesignations for all transactions. TAPS argues that the better course is to allow system-based undesignation for all system sales given that the ATC refinement efforts remain under development by NERC and NAESB and the Commission will have the opportunity to revisit the undesignation requirements once that work is complete.

196. Some petitioners challenge the Commission's underlying concern, as expressed in Order No. 888 and referenced in Order No. 890–A, that network customers may have an incentive to designate unlimited generation resources absent a prohibition on network resources including any portion of a resource that is committed for sale to a third party.[130] Pacific Northwest IOUs argue that a buyer's decision as to whether or not to designate a system sale as a network resource has no bearing on the seller's incentive or disincentive to overdesignate network resources. Pacific Northwest IOUs contend that the seller will designate those resources which it believes are necessary to serve its load regardless of how a buyer chooses to use a system sale from the seller. Southern agrees, arguing that the costs associated with acquiring resources that meet all the requirements for designation serve as an appropriate economic incentive not to overdesignate. These petitioners note that the Commission already addressed concerns regarding over-designation of network resources in Order No. 888 by determining that ''a transmission customer, like a transmission provider, has an incentive not to oversubscribe its capacity requirements because the cost of excessive reserve margins will be prohibitive.'' [131] Pacific Northwest IOUs argue that the procedural complexities associated with designating network resources provide further incentives not to overdesignate and that such incentives exist regardless of how a buyer uses a system purchase.

197. EEI contends that a seller will charge more for a power sale that it cannot recall without paying a penalty, or that it cannot recall at all, than it will charge for a sale that it can recall. EEI argues that there is therefore an additional financial disincentive to overdesignate network resources regardless of whether a seller undesignates a slice of its entire system or a portion of each generator involved in the sale. EEI acknowledges that transmission service that the buyer takes in connection with a system sale might affect ATC associated with the transaction. EEI suggests, however, that the Commission address any concerns about reservations of transmission service by buyers of slice-of-system energy directly through requirements that apply to buyers rather than sellers. EEI argues that restricting the type of transmission service the buyer may choose with respect to a slice-of-system purchase violates the basic tenet of open access transmission service that a transmission customer has the freedom to take whatever transmission service is available to it under the *pro forma* OATT.

198. Some petitioners argue that the policy of requiring resource-specific undesignations for system sales which are not designated as network resources by the buyer creates implementation problems.[132] These petitioners state that the entity making the sale may have no knowledge as to whether the sale is being used as a network resource and, thus, would not know which undesignation rule to apply. Petitioners also note confusion over what the seller's undesignation obligation would be were the buyer to undesignate its purchase after the sale is made, particularly when such activity is not known to the seller. E.ON U.S. requests clarification that the seller in a slice-of-system sale will not have violated the transmission provider's OATT as a result of its counterparty's failure to designate or undesignate the network resource as required, so long as the seller treated the slice-of-system sale appropriately by relying on the counterparty's actions at the commencement of the transaction. Pacific Northwest IOUs question whether an undesignation may be made on a project basis when the resource has been designated on a project basis.

199. Several petitioners question the relevance of an off-system buyer's designation of a system sale as a network resource on another transmission provider system. Duke argues that a sale by its merchant function to an off-system network customer designating the purchase as a resource and a sale by its merchant function to an off-system power marketer intending to resale the power elsewhere must both be accomplished by scheduling point-to-point service from Duke to the neighboring system. Duke contends that it makes no sense to require its merchant to undesignate generating units used to serve one sale but not the other, particularly since its merchant would have no knowledge of subsequent changes in the designation status of the resource purchased by the off-system network customer.

200. EEI states similar concern regarding the ability of a seller to know the sink where energy from a system power sale is delivered to an off-system buyer since the buyer may resell it to another customer. EEI contends that the seller may not have access to the OASIS of the transmission provider where the buyer is located and, therefore, may not be able to determine whether the buyer has designated the purchase as a network resource. EEI notes that, while the Commission directed NERC and NAESB to develop processes to allow transmission personnel to obtain access to the OASIS of other transmission providers to verify the firmness of transmission arrangements delivering off-system designated network resources, the Commission did not grant the same level of OASIS access to the merchant function making sales of system power.

201. Pacific Northwest IOUs ask the Commission to specifically clarify that

[129] *E.g.,* Deseret, NRECA, Pacific Northwest IOUs, Southern, and TAPS.

[130] *E.g.,* EEI, Pacific Northwest IOUs, and Southern (*citing* Order No. 888 at 31,753–53; Order No. 890 at P 951).

[131] *Quoting* Order No. 888 at 31,754.

[132] *E.g.,* Duke, E.ON U.S., EEI, and Pacific Northwest IOUs.

the limitations stated in Order No. 890–A apply only to on-system sales and that sellers may undesignate a slice of their system used to support off-system sales regardless of how the buyer treats, designates, or uses the purchased power. Pacific Northwest IOUs state that this would be consistent with the Commission's apparent focus on on-system sales in its discussion of this issue in Order No. 890–A. In support of their request, Pacific Northwest IOUs state that the off-system buyer's use of the system sale has no impact on the seller's transmission system, including ATC.

Commission Determination

202. The Commission affirms the determination in Order No. 890–A that a network customer and the transmission provider's merchant function must undesignate each portion of each resource that is used to support a sale of system power if the buyer has not designated the purchase as a network resource.[133] The requirement that network customers undesignate their network resources when making firm third-party sales was first imposed in Order No. 888 to ensure that all designated network resources can, in fact, be called upon by the transmission provider to serve network load:

> Absent a requirement that network resources always be available to meet a customer's network loads, reliability of service to the network customer as well as to native load and other network customers could be affected * * *. If a network customer desires to enter into a firm sale from its designated network resource * * *, it must eliminate the appropriate resources or portions thereof from its designated network resources pursuant to pro forma tariff section 30.[134]

203. The restriction on third-party sales from designated network resources therefore enhances the ability of the transmission provider to plan and operate its system to integrate designated resources with the customer's loads. Without the restriction, transmission providers could reduce ATC by maintaining the same existing transmission commitments for anticipated uses of the network customer's designated resources even though the network customer has otherwise committed those same resources to other parties on a firm basis.

204. The Commission in Order No. 890 therefore retained the requirement to undesignate network resources that are used to support firm third-party sales, reiterating that the undesignation and redesignation requirements work together to promote reliability, prevent undue discrimination, promote comparable treatment of customers, and increase the accuracy of ATC calculations.[135] In Order No. 890–A, however, the Commission clarified that the requirement to undesignate on a resource-by-resource basis does not apply to system sales in the event the buyer has also designated the purchase as a network resource.[136] This clarification was provided in response to complaints by various petitioners that keeping track of individual generating units and amounts of generation from each unit being used to support system sales is unduly burdensome or impossible.[137]

205. At the outset, we note that the discussion in Order No. 890–A appears to have caused confusion by not specifically stating that the exception to the requirement to undesignate capacity supporting a system sale on a resource-by-resource basis for system sales that are designated as network resources by the buyer applies only to transactions in which the buyer and seller are located on the same transmission system. As the Commission explained in Order No. 890–A, when a seller's network resources are used to support an on-system system sale, the buyer meets the informational requirements of section 29.2(v) simply by identifying the seller's system as the resource, because the detailed operating characteristics for those generators were already provided when they were designated by the seller.[138] The transmission provider is therefore already modeling power transfers from those resources to the seller's load. The designation of a system sale as a network resource by the buyer provides the transmission provider adequate information to also simulate power transfers from that resource to the buyer's load given that the transmission provider already has information on the system resources resulting from the seller's designation of the underlying resources. It is not necessary to require the seller to undesignate individual resources and, instead, the undesignation can be done on a system basis, *i.e.*, by undesignating an aggregate portion of network resources equal to the amount of the system sale, but which is not attributed to any specific resource.

206. In comparison, when the buyer does not designate the system purchase as a resource, the buyer will not be using network service to take delivery of associated energy. In order for the buyer to schedule point-to-point service to take delivery, the transmission customer must identify the points of receipt and delivery for the transaction, *i.e.*, the points on the host transmission system where capacity and energy will be received from the seller and delivered to the buyer.[139] The point-to-point transmission reservation and the corresponding resource-specific undesignation provide the transmission provider with the information it needs regarding location of the particular resources being used by the seller to source the transaction in order to model the effect of the transaction on its transmission system and set aside ATC accordingly. Without this information, transmission capacity associated with integrating the seller's resources with its load could continue to be set aside for the seller's benefit, even though the resources have been committed for sale to third parties on a firm basis.[140]

207. We therefore disagree that there is no support for distinguishing sales of system power that have been designated as network resources by the buyer and those that have not. Several petitioners argue that the individual undesignation of network resources used to supply system sales will not have an effect on ATC or the reliable operation of the transmission system regardless of the type of transmission service used to deliver the power to the buyer. EEI, however, acknowledges that the type of transmission service used by the buyer of system power may affect ATC associated with the transaction, and we agree. It is for that reason that the Commission directed transmission providers to address the effect on ATC of designating and undesignating network resources as part of the on-going NERC/NAESB ATC

[133] *See* Order No. 890–A at P 947.

[134] *See* Order No. 888–A at 30,326.

[135] *See* Order No. 890 at P 1576.

[136] *See* Order No. 890–A at P 947.

[137] *See id.* P 936–37.

[138] *See id.* P 889.

[139] *See pro forma* OATT, sections 1.35, 1.36 and 13.7. The Commission therefore stated in Order No. 890–A its expectation that most, if not all, system sales sources from designated network resources are themselves designated as network resources by the buyer. *See* Order No. 890–A at P 947. Even if this is not the case, as a number of petitioners argue, the Commission continues to be concerned that system sales from units that are not designated by the buyer as a network resource may impair the reliable planning and operation of the transmission provider's system.

[140] We clarify in response to the Pacific Northwest IOUs that the Commission's reference to the undesignation of ''units'' in paragraph 947 of Order No. 890–A was unintentionally narrow. The restriction on certain third-party sales from a designated network resource applies to each resource or portion thereof under section 30.4 of the *pro forma* OATT.

standardization effort.[141] This does not mean, as EEI suggests, that distinguishing the seller's undesignation obligation on the actions of the buyer undermines the buyer's access to service under the *pro forma* OATT. The buyer is free to request either network or point-to-point service as it believes best fits its needs in light of the resources it wishes to deliver.

208. We disagree that it is unduly burdensome or complicated to condition the seller's ability to make system sales from designated network resources on the buyer's decision to designate the purchase as a network resource. As explained above, the Commission has long prohibited firm sales to third parties from any designated network resource. The Commission has made an exception for system sales that also have been designated as a network resource by a buyer located on the same transmission system. This increases, not decreases, opportunities for network customers and the transmission providers' merchant functions to engage in transactions. Although the Commission could further expand these opportunities by eliminating the undesignation requirement altogether, to do so could adversely affect the transmission provider's ability to reliably plan and operate its system. Because the undesignation restrictions apply equally to all designated resources and are necessary to ensure that the transmission provider can provide reliable service to all customers, they are therefore consistent with our obligations under FPA section 217.

209. We also conclude that concerns regarding the ability to verify or monitor the buyer's decision to designate a purchase of system power as a network resource are overstated in light of the clarification that the buyer and seller must be on the same transmission system. In Order No. 890, the Commission directed transmission providers, working through NERC, to develop OASIS functionality for the designation of network resources and for queries of information provided with designation requests.[142] Parties to a sale of system power on the same transmission system will therefore have ready access to the treatment of the resource. Sellers also may rely on commitments made by the buyer to designate the purchase as a network resource.

210. We reiterate that, if the particular ATC methodology used by a transmission provider allows for flexibility in implementing the undesignation requirements for system sales, the transmission provider may propose a variation to the *pro forma* OATT in an FPA section 205 filing. In Order No. 890–A, the Commission stated that such requests should address the Commission's concern, as stated in Order No. 888, that network customers may have the incentive to designate unlimited generation resources absent a prohibition on network resources including any portion of a resource that is committed for sale to a third party.[143] Several petitioners argue that the Commission mischaracterized the concern stated in Order No. 888, since there the Commission found that the cost of excessive reserve margins acts as a financial disincentive to overdesignate resources.[144] However, the reason the cost of reserve margins acts as a disincentive to overdesignate resources is because designated resources may be used only for certain specified purposes. It therefore remains appropriate to require those seeking a variation from the *pro forma* OATT with respect to eligibility for network resource status to address the Commission's concern regarding overdesignation of resources. In addition, to the extent necessary, we clarify that the transmission provider should also address the Commission's concern, also stated in Order No. 888–A and reiterated above, that sales from designated network resources not impair the reliable planning and operation of the transmission provider's system.

(3) General

211. In response to requests for rehearing, the Commission in Order No. 890–A amended sections 1.26 and 30.4 of the *pro forma* OATT to make clear that network resources do not have to be undesignated before they are used to support the provision of reserve energy under a Commission-approved reserve sharing agreement.

Requests for Rehearing and Clarification

212. E.ON U.S. requests clarification that the exception to the requirement for undesignation for resources used to support the provision of reserve energy under a Commission-approved reserve sharing agreement also applies to back-up power sales, which E.ON U.S. describes as long-term, cost-based sales aimed at substituting power for generation that is not available for reasons such as planned or forced outages, curtailments, or unit de-ratings. E.ON U.S. argues that, like reserve sharing arrangements, back-up power sales are made for reliability purposes and may require the provision of energy within a timeframe that is too short for the seller to undesignate the resource. E.ON U.S. states that back-up power sales are not limited to *per se* emergency situations, but rather are necessary to avert emergencies.

213. TDU Systems seek clarification of the determination in Order No. 890–A that network resources do not have to be undesignated before they are used to support the provision of reserve energy under a Commission-approved reserve sharing agreement. TDU Systems question whether the Commission intended to impose an additional approval process for reserve-sharing agreements being made from designated network resources. TDU Systems seek guidance regarding which reserve sharing agreements qualify as Commission-approved and what criteria a reserve sharing agreement must meet in order to be approved. TDU Systems ask whether, for example, existing Commission-approved bilateral interchange agreements providing for emergency and maintenance services between and among utilities qualify. TDU Systems also seek clarification that Order No. 890–A is not excluding from this exception interchange agreements or reserve-sharing agreements among non-jurisdictional entities.

Commission Determination

214. The Commission declines to expand the categories of third-party sales that can be made from designated network resources to include back-up power sales, as requested by E.ON U.S. Network customers and the transmission provider's merchant function are permitted to use designated network resources to fulfill obligations under reserve-sharing agreements given the particular nature of those transactions, which involve the need to deliver power to counterparties promptly during emergency situations. E.ON. U.S. acknowledges that, unlike reserve-sharing agreements, back-up power sales are not limited to emergency situations. E.ON U.S. has not justified further expanding the categories of third-party sales that may be made from designated network resources.

215. In response to TDU Systems, we grant rehearing of Order No. 890–A to eliminate the requirement that a reserve sharing program be approved by the Commission in order for a network customer or the transmission provider's

[141] *See Mandatory Reliability Standards for the Bulk-Power System,* Order No. 693, FERC Stats. & Regs. ¶ 31,242, at P 1041, *order on reh'g,* Order No. 693–A, 120 FERC ¶ 61,053 (2007).

[142] *See* Order No. 890 at P 1477.

[143] *See* Order No. 890–A at P 951.

[144] *Quoting* Order No. 888 at 31,754.

merchant function to use a designated network resource to meet its reserve sharing obligations.[145] As TDU Systems explain, certain reserve sharing arrangements may not be subject to our jurisdiction, and the Commission did not intend in Order No. 890–A to establish new criteria for reviewing and approving reserve sharing arrangements in this proceeding. We clarify, however, that, for purposes of sections 1.26 and 30.4 of the *pro forma* OATT, a reserve sharing program must limit service to the sharing of contingency reserves among the members for emergencies [146] and the ability to use designated network resources to support reserve sharing obligations does not extend to other types of third-party sales. Any use of designated network resources for reserve sharing events would be subject to justification during an audit.

5. Clarifications Related to Network Service

216. In Order No. 890–A, the Commission reiterated that the *pro forma* OATT permits transmission customers to exclude the entirety of a discrete load from network service and serve such load with the customer's behind the meter generation and through any needed point-to-point service, thereby reducing the network customer's load ratio share. In other situations, use of point-to-point service by network customers is in addition to network service and, therefore, does not serve to reduce their network load. With regard to concerns about insufficient transmission to serve a network customers' entire load, the Commission stated that it failed to understand how, under normal circumstances, the transmission provider has no capacity to serve a load that has been designated by the network customer. Once a load has been designated, it is the obligation of the transmission provider to serve that load and to plan its system so that the load can be accommodated in the future.

Requests for Rehearing and Clarification

217. Pacific Northwest IOUs request clarification that there is no *per se* prohibition on a transmission customer using both point-to-point and network service to serve load in the same balancing authority area, provided that the point-to-point service is acquired in addition to the customer's network service payment obligation and provided that all other conditions for the use of point-to-point service are satisfied. Pacific Northwest IOUs argue that, for certain compliance and commercial reasons (*e.g.*, lack of sufficient allocated network service), point-to-point service can be an appropriate and important adjunct to network service even considering the added cost of the point-to-point purchase. Where load ratio share obligations are not at issue, Pacific Northwest IOUs argue that transmission customers should be permitted to use both point-to-point and network service.

218. EEI and E.ON U.S. request clarification of the Commission's statement in Order No. 890–A that, once a load has been designated by the network customer, it is the obligation of the transmission provider to serve that load and to plan its system so that the load can be accommodated in the future.[147] These petitioners ask the Commission to confirm that a transmission provider has the obligation to serve and plan for a network customer's load only to the extent that the customer has designated sufficient network resources to serve that load. In their view, section 28.2 of the *pro forma* OATT requires only that a transmission provider plan for and construct transmission facilities sufficient to deliver energy from the network customer's network resources to meet the customer's network load on a basis comparable to the transmission provider's delivery of its own generating and purchased resources to its native load customers. EEI contends that the requirement of section 29.2(v) to provide projections of network resources further confirms that the transmission provider is only required to plan for and construct transmission facilities required to deliver the network customer's energy from resources designated or forecasted by the network customer. E.ON U.S. argues that failure to provide the requested clarification could result in transmission providers having to guess where facilities will need to be built in order to serve load.

Commission Determination

219. The Commission clarifies, to the extent necessary, that there is no *per se* prohibition on a transmission customer using both point-to-point and network transmission service, but that any use of point-to-point service by a network customer does not decrease the size of the network customer's load for purposes of calculating its load ratio share payment obligations except to the extent the discrete load being served has been excluded in its entirety from network service. In response to EEI and E.ON U.S., we clarify that the Commission did not intend in Order No. 890–A to modify the obligation of transmission providers under section 28.2 of the *pro forma* OATT to endeavor to construct and place into service sufficient transfer capability to deliver the network customer's network resources to serve its network load on a basis comparable to the transmission provider's delivery of its own generating and purchased resources to its native load customers. The statement questioned by petitioners was made in response to requests for an exception from load ratio pricing when a particular network load cannot be entirely served by the transmission provider's system without upgrades.[148] The Commission rejected that request, explaining that the transmission provider should be planning its system to serve its network customers' designated loads and that situations in which a particular designated load cannot be served are best addressed on a case-by-case basis. We agree, however, that the obligation of the transmission provider to adequately plan for the needs of its network customers is of course dependent on the network customer designating adequate network resources as well as providing information regarding its forecasted loads and resources, as required under section 29.2 of the *pro forma* OATT.

6. OATT Definitions

a. Non-Firm Sales

220. In Order No. 890, the Commission adopted the following definition of Non-Firm Sales to identify more clearly those types of sales that are permitted from designated network resources: ''An energy sale for which receipt or delivery may be interrupted for any reason or no reason, without liability on the part of either the buyer or seller.'' The Commission concluded that it would be inappropriate to adopt commenter suggestions to relax the definition of a Non-Firm Sale to include any sale that is not otherwise firm enough to be designated as a network resource.

221. In Order No. 890–A, the Commission clarified that, under normal circumstances, a system sale that permits curtailment without penalty to serve the seller's native load

[145] We also revise sections 29.2(viii), 30.1 and 30.2 of the *pro forma* OATT to include references to the use of network resources to meet reserve sharing obligations. These tariff revisions do not relieve participants to an otherwise jurisdictional reserve sharing arrangement of any obligations they may have under FPA section 205 to obtain Commission approval for that arrangement.

[146] *See, e.g., Sw. Reserve Sharing Group,* 83 FERC ¶ 61,314 (1998), *reh'g denied,* 95 FERC ¶ 61,071 (2001).

[147] *See* Order No. 890–A at P 971.

[148] *See* Order No. 890–A at P 971.

would fall within the definition of a Non-Firm Sale since the seller would have the right to rely on that capacity in the event it is needed to serve native load, which the Commission stated is the principle concern in restricting sales from designated network resources to non-firm sales. The Commission disagreed with petitioners arguing that the definition of Non-Firm Sales includes transactions that permit interruption with financial liability, whether make whole or limited to certain penalties, explaining that any interruption in service that would create liability on the part of the seller would create conflicting incentives regarding use of the network resource.

222. The Commission also denied requests to amend the definition of Non-Firm Sales to accommodate the particular market operations of each RTO and ISO. The Commission acknowledged that centralized dispatch in those markets may very well eliminate any effect that temporary resource undesignations and redesignations have on dispatch or ATC calculations and, therefore, tailoring the rules governing the designation of network resources to each RTO/ISO market could be appropriate.

Requests for Rehearing and Clarification

223. TAPS argues that the Commission's determinations in Order No. 890 regarding the sales that may be made from a network resource without undesignation leaves the OATT in a state of confusion that will make compliance by transmission providers and network customers hazardous. TAPS contends allowing sales that are curtailable for native load reliability purposes, not economics, to be considered non-firm sales is in conflict with the plain language of the definition, which is strictly limited to sales that are interruptible for any or no reason. TAPS contends this modifies without explanation the Commission's clarification provided in Order No. 890 that energy sales that can be interrupted to maintain system reliability are considered firm sales.[149]

224. TAPS argues that the Commission's focus in Order No. 890–A on the ability to curtail sales (without liability) for native or network load is inconsistent with the Non-Firm Sales definition and produces illogical results, allowing the same recallable sale to be simultaneously both non-firm for the seller and firm for the buyer and, as a result, be designated twice. At the same time, TAPS argues, the Commission expanded the class of sales that are neither firm nor non-firm sales by clarifying that sales that may be interrupted for any reason, but with potential liability, do not fall within the definition of Non-Firm Sales. TAPS contends that finding a total bar on recall for native load economic purposes, as in the case of curtailable sales, to be less of a disincentive than the ability to recall for native load with potential liability, no matter how small, defies common sense and is not supported by evidence. TAPS notes that commenters at the July 30 technical conference in this proceeding stated that sellers were moving away from participation in the Midwest ISO day-ahead market because of uncertainties about redesignation if an undesignated resource selling into that market were needed in real time to serve native load due to a real-time contingency. TAPS argues that the obligation to pay the real-time locational marginal price (LMP) would not create a disincentive to recall the sale if needed for native load and, to the contrary, the flexibility to interrupt for any reason or no reason to meet native load needs is so valuable that uncertainties associated with undesignation deter sales into RTO markets from resources that are designated within and outside the RTO.

225. TAPS contends that distinguishing between curtailable sales that may be made from designated network resources and fully interruptible sales that entail some financial liability runs counter to the fundamental principle that it is the nature of the delivery obligation, not the LD provisions, that determine whether a resource is sufficiently firm to qualify for designation as a network resource.[150] TAPS states that Order No. 890 suggested that the existence of any financial liability controls whether a sale may be deemed a non-firm sale, regardless of the nature of the seller's obligation to deliver, while Order No. 890–A relies on restrictions to warrant exclusion of unit contingent sales from the definition of Non-Firm Sales.[151] TAPS argues that the Commission has failed to provide any consistently applied standard that network customers and transmission providers can use to determine whether a sale qualifies as a non-firm sale, much less one that conforms to the new definition.

226. TAPS also argues that the Commission's determinations do not make sense from the standpoint of freeing up ATC since sales that are curtailable for reliability reasons may be designated as network resources by both the buyer and seller. TAPS contends that dual designation potentially double counts resources for ATC purposes, tying up firm ATC potentially on a long-term basis. In contrast, TAPS continues, day-ahead hourly sales that can be interrupted for any or no reason, that have been treated as non-firm, and that are not and could not be designated as network resources by the buyer require undesignation because the potential for any financial consequence of interruption disqualifies them as Non-Firm Sales. TAPS argues that the only ATC that might be created by such undesignations would be very short-term. Pending the results of on-going standards development work with NERC and NAESB, TAPS contends it is not clear whether such short-term undesignations will create firm capacity more useable than the unused non-firm capacity released by the transmission provider without undesignation.

227. TAPS objects to the Commission's determination in Order No. 890–A that issues related to sales into RTO markets should be dealt with in the context of individual requests for deviation from the *pro forma* OATT. Although issues pertaining to the ability of a network customer within an RTO to use its network resources to participate in the RTO's day-ahead market can be addressed in the RTO tariff, TAPS argues that restrictions on use by a network customer outside the RTO of its network resources designated on another transmission provider's system cannot be addressed through modifications to the RTO's tariff. TAPS therefore argues that the Commission can avoid discouraging network customers (and transmission providers) located outside an RTO from selling into the RTO's day-ahead market only by modifying the *pro forma* OATT.

228. TAPS maintains that the Commission's application and interpretation of the Non-Firm Sales definition creates new barriers to precisely the type of cross-border sales the Commission is trying to encourage.[152] TAPS argues that supply limitations resulting from applying undesignation requirements to sales into RTO day-ahead markets could needlessly increase prices in such markets and potentially affect reliability. Those located outside RTO markets, TAPS continues, would be most reluctant to sell into RTO markets

[149] *Citing* Order No. 890 at P 1688, 1692.

[150] *Citing id.* P 1452; *Dynegy Midwest Generation, Inc.* v. *Commonwealth Edison Co.*, 101 FERC ¶ 61,295, at P 1 (2002), *reh'g dismissed as moot,* 108 FERC ¶ 61,175 (2004).

[151] *Citing* Order No. 890–A at P 1016.

[152] *Citing Wis. Pub. Serv. Corp.* v. *Midwest Indep. Transmission Sys. Operator, Inc.,* 120 FERC ¶ 61,269, at P 58 (2007).

during peak conditions, when transmission is scarce and there are concerns about redesignation in the event the energy is needed for native load, thus depriving RTOs of supply offers when they need them the most.

229. TAPS further argues that the lack of clarity in the Commission's application of the Non-Firm Sales definition may discourage sales into organized markets even in situations where there is a trivial financial consequence to permissible interruptions that the Commission could not rationally conclude would pose any disincentive to recall for network load needs. TAPS states that RTO scheduling deadlines may result in some short period of liability for real-time LMPs even where market participants retain rights to change their bids and schedules. For example, TAPS explains, market participants submitting offers into MISO's real-time market from external generators must provide notice prior to 30 minutes before the operating hour in order to make effective their right to change their offers in the real-time market, *i.e.*, to interrupt for any or no reason. TAPS states that the network customer seeking to recall its interruptible sale would therefore be subject to financial consequences during the notice period. TAPS questions whether that financial responsibility is sufficient to bar sales without undesignation.

230. TAPS suggests that the Commission reassess what it was seeking to achieve through clarification of the non-firm sales that can be made from network resources without undesignation, remove the definition of Non-Firm Sales, and enunciate clear and consistent principles for discerning whether, considering the nature of the delivery obligation, a sale can be made from a network resource without undesignation. Such principles, TAPS argues, should not assume that the mere existence of any financial liability creates improper incentives, thereby giving undue emphasis to what is likely to be a minor factor affecting a network customer's ability to interrupt the sale in favor of native load, assuming the contract permits interruption for any reason or no reason. TAPS contends that the Commission should expressly permit short-term sales, such as sales into organized day-ahead and real-time markets, that involve no obligation to deliver (and can be entered by virtual traders with nothing to deliver) to be made from a network resource without undesignation.

231. If the Commission retains the Non-Firm Sale definition, TAPS asks the Commission to construe it consistently with the firmness of the delivery obligation and make clear that it takes more than the liabilities associated with sales into day-ahead, and to eliminate any doubt same-day, RTO markets to disqualify such interruptible sales from treatment as Non-Firm Sales. Because of the importance of supporting short-term competitive markets, TAPS alternatively requests that the Commission make this clear by creating an additional exception to section 30.4 of the *pro forma* OATT, like the new exception for sales pursuant to Commission-approved reserve sharing agreements, to permit use of network resources without undesignation for day-ahead and same-day sales that are subject to interruptions, without regard to the liabilities associated with such interruptions.

232. At a bare minimum, TAPS argues, the Commission should provide more realistic guidelines for the level of liability it views as providing incentives that disqualify an interruptible sale from being considered a Non-Firm Sale so that concerns about avoiding potential tariff violations do not discourage transactions that the Commission intends to permit without undesignation. TAPS suggests, for example, that the Commission might reasonably conclude that liabilities restricted to notice periods applicable to the interruption of a sale do not trigger the need for undesignation. TAPS argues that it is plainly inconsistent with market realities for the Commission to assume that any liability for interruption of a third-party sale, no matter how insignificant, will create incentives incompatible with the use of network resources for network load.

233. E.ON U.S. agrees with TAPS that excluding sales into the Midwest ISO market is a disincentive for sellers to participate in that market because the Commission's undesignation requirements are not easily adaptable to such market activity. E.ON U.S. also asks the Commission to revise the definition of Non-Firm Sales to include sales into organized RTO markets. In the alternative, E.ON U.S. requests that the Commission clarify that it will consider transmission providers' modifications to the definition of Non-Firm Sales in order to accommodate sales into RTO/ISO markets.

Commission Determination

234. The Commission affirms the decision in Order No. 890–A not to amend the definition of Non-Firm Sales adopted in Order No. 890.[153] Section 30.4 of the *pro forma* OATT, as amended in this order, restricts the operation of a network customer's designated network resources such that the output of those facilities does not exceed the sum of the network customer's designated load, non-firm sales, losses, and sales under a reserve sharing agreement. This prohibits the transmission provider or a network customer from using a designated resource for third-party sales that do not fall within one of the specified categories. At times, the Commission has generally referred to this prohibition as a limitation on firm third-party sales from designated network resources.[154] To be more specific, network customers may not operate designated network resources except for those purposes specified in section 30.4.

235. The limitation on the use of designated network resources is closely related to the restriction on the type of resources that may be designated for use to serve network or native load. Together, these rules ensure that only the appropriate amount of network resources is designated and, in turn, that excessive amounts of transmission capacity for network and native load uses are not set aside and therefore made unavailable to others seeking transmission service. We recognize that there is a trade off between the long-term structural efficiencies promoted by the network resource rules and the real-time market efficiencies that would come from allowing alternative, flexible use of designated network resources. In Order No. 888, the Commission balanced these considerations and determined that concerns regarding the over-designation of resources and the reliable operation of the system supported the more restrictive rules to which TAPS objects.

236. In Order No. 888, the Commission explained that restricting the ability to designate resources only to those resources that are owned or committed for purchase provides a financial incentive for network customers and the transmission provider's merchant function not to oversubscribe their capacity requirements.[155] Because a designated network resource must be owned or committed for purchase and may be used only for certain purposes, network customers and the transmission provider's merchant function are encouraged to designate only those resources that they anticipate needing to serve network load. Otherwise, costs

[153] *See* Order No. 890–A at P 1016.

[154] *See* NOPR at P 422; Order No. 890 at P 1539; Order No. 890–A at P 951.

[155] *See* Order No. 888 at 31,754.

would be incurred to acquire resources that could go unused. These financial incentives are essential to ensuring just and reasonable transmission service to all customers since, each time a network resource is designated, the transmission provider sets aside ATC as necessary to allow that resource to be used to serve network or native load. If network customers and the transmission providers' merchant function were allowed to earn revenues from alternative sales without appropriate limitations, the financial disincentive to over-designate network resources would be diminished. This in turn could negatively impact other customers since an increase in the number of resource designations can decrease the amount of ATC that is available for competing uses.

237. TAPS fails to address this broader policy consideration and, instead, focuses solely on the short-term benefits that may result from relaxing the designation rules. We agree that more flexible use of designated network resources could increase efficiencies in the short-term, but conclude that such efficiencies would come at the expense of long-term efficiency in the operation of the transmission system. Allowing designated network resources to be used for additional short-term purposes as proposed by TAPS would undermine competing incentives not to over-designate resources in the first place and could lead to transmission capacity being set aside for network and native load use to the detriment of other customers.[156]

238. In light of these competing considerations, the Commission in Order No. 890 carefully crafted the definition of Non-Firm Sales to ensure that, pursuant to section 30.4, network resources are not used to support sales in a way that creates conflicting incentives regarding the designation and use of network resources.[157] Petitioners have failed to demonstrate that elimination or amendment of this definition is either necessary or appropriate. TAPS contends that the obligation of a seller to pay the real-time LMP if it fails to deliver in response to bids in a day-ahead market may be negligible and, therefore, such sales should be considered non-firm for purposes of the network resource rules. While that obligation may be minimal in some circumstances, it may be substantial in others, particularly during conditions when sellers are most likely to want or need to recall such power. The sales that TAPS argues are non-firm enough to be made from a network resource do have financial implications, potentially creating disincentives to interrupt delivery if capacity is actually needed for native or network load, even though ATC may have otherwise been set aside for that use.

239. We agree with TAPS, however, that the language of the definition does not accurately capture the clarification provided in Order No. 890–A that designated network resources may be used to support third-party sales that permit curtailment without penalty to serve the seller's network or native load.[158] There the Commission stated that such sales fall within the definition of Non-Firm Sales since the seller would have the right to rely on that capacity in the event it is needed to serve native load. Upon further consideration, we conclude that such sales do not fall within the definition of Non-Firm Sales because they do not permit interruption for any or no reason, as required by the definition. We therefore grant rehearing of the determination that such sales fall within the definition of Non-Firm Sales.

240. We nevertheless affirm the underlying conclusion in Order No. 890–A that designated network resources may be used to support sales that permit curtailment without penalty to serve the seller's native or network load and amend section 30.4 of the *pro forma* OATT to make that clear. As the Commission explained in Order No. 890–A, those transactions give the seller the right to rely on the underlying capacity in the event it is needed to serve native or network load.[159] In Order No. 890–A, the Commission characterized this as its principal concern in restricting sales from designated network resources to non-firm sales. TAPS misconstrues this statement as indicating the Commission is not also concerned about competing incentives created by third-party sales from designated network resources or the effect of such sales on the calculation of ATC. As we explain above, that is not the case and, to the extent necessary, we clarify that the contractual ability of the seller to rely on capacity to serve native or network load is but one of the concerns underlying the Commission's policy restricting the type of third-party sales that can be made from network resources.

241. We acknowledge that, under the Commission's designation policies, sales that may be curtailed without penalty to serve native or network load may be designated as a network resource by both the seller and the buyer.[160] We also acknowledge that allowing these sales from designated network resources could be viewed as inconsistent with the policy considerations that cause us to otherwise limit the type of sales that may be made from those resources. We conclude, however, that this exception is necessary to ensure that the seller is able to access these resources during curtailment conditions, when power is needed by the seller to meet its load. Curtailments are triggered by system reliability conditions, and requiring the seller to redesignate a network resource in order to recall a curtailed delivery would impede the seller's ability to quickly respond to those conditions. We note that transmission providers have been directed to address the effect on ATC of designating and undesignating network resources as part of the on-going NERC/NAESB standardization effort.[161] Any concerns regarding the proper modeling of designations involving resources that have been sold to others on a curtailable basis should be addressed through the NERC/NAESB process.

242. We disagree with TAPS that allowing sales that are curtailable without penalty to be supplied from designated network resources is inconsistent with Order No. 890. TAPS contends that the Commission adopted in Order No. 890 the NOPR proposal to clarify that, for the purposes of applying section 30.4, energy sales that can only be interrupted to maintain system reliability would be considered firm sales.[162] Although the Commission noted that proposal in Order No. 890, it did not specifically adopt it and, instead, simply adopted the proposed definition of Non-Firm Sale and incorporated that definition into section 30.4.[163] Southern then requested clarification of Order No. 890 on this issue, asking whether sales permitting curtailment without penalty to serve the

[156] Because rates for network service are calculated on a load-ratio basis, the amount of resources designated has no impact on the transmission rate paid by the customer and, therefore, does not discourage the over-designation of resources by network customers.

[157] *See* Order No. 890 at P 1691; Order No. 890–A at P 1017.

[158] *See* Order No. 890–A at P 1016.

[159] *See* Order No. 890–A at P 1016. From the seller's perspective, then, the resource satisfies the definition of Network Resource in section 1.26 of the *pro forma* OATT because it can be called upon to meet the seller's load on a non-interruptible basis during system reliability conditions.

[160] *See WPPI,* 84 FERC at 61,652 (contracts curtailable by the seller to preserve service to native load are eligible for designation as a network resource).

[161] *See* Order No. 693 at P 1041.

[162] *See* NOPR at P 462.

[163] *Compare* Order No. 890 at P 1688 *with id.* P 1692.

seller's native load can be treated as non-firm sales under section 30.4.[164] The Commission ultimately addressed the issue, then, in Order No. 890–A by stating that such sales could be treated as non-firm sales.[165] The Commission corrects that determination above, resolving the potential inconsistency cited by TAPS.

243. We also disagree that the Commission's treatment of sales curtailable without penalty to serve native or network load conflicts with the determination in Order No. 890–A that, under normal circumstances, unit contingent sales would not fall within the definition of a Non-Firm Sale because delivery typically can be interrupted only for the specific reasons identified in the underlying agreement.[166] While it is true that sales curtailable without penalty to serve native or network load may be curtailed only for specified reasons, *i.e.*, system reliability conditions, it does not follow that allowing those sales to be made from designated network resources conflicts with disallowing unit contingent sales. As we explain above, it is appropriate to allow curtailable sales from designated network resources because of the particular reliability-related situations giving rise to the seller's ability and need to curtail deliveries for the benefit of native or network load.

244. We reiterate that the Commission is not insensitive to concerns about the effect the undesignation policies may have on RTO/ISO markets. As the Commission explained in Order No. 890–A, RTOs and ISOs have adopted many variations from the *pro forma* OATT to facilitate development of their markets, with some entirely eliminating the designation/undesignation requirements for network resources.[167] The Commission has since specifically directed the Midwest ISO to revise its OATT to eliminate the requirement that network resources be undesignated prior to selling into the Midwest ISO markets, finding that undesignation is not necessary to account for effects on ATC because those markets are centrally dispatched without regard to physical transmission rights.[168]

245. We disagree, however, that changes to the *pro forma* OATT are necessary to facilitate sales into the organized day-ahead markets from designated network resources located outside the RTO/ISO regions. Even if such sales are fully interruptible by the seller, the competing economic incentives that may arise from failure to deliver support the requirement to first undesignate the network resource prior to using it to support such sales. As we explain above, failing to require undesignation could result in the host transmission provider reducing ATC by maintaining the same existing transmission commitments for the seller's use of the designated network resource even though the seller is otherwise using the resource to support off-system sales.

246. We therefore continue to believe that it is reasonable to require sellers to undesignate resources being used to supply third-party sales for which there is liability for interruption except in those circumstances identified in section 30.4 of the *pro forma* OATT. However, we appreciate that the restrictions on the use of designated network resources can have a negative impact on real-time liquidity by limiting the flexibility of network customers and the transmission provider's merchant function. Since adoption of the *pro forma* OATT, the Commission has recognized that there may be circumstances in which a transmission provider believes that the *pro forma* OATT does not provide sufficient flexibility and, as a result, transmission providers have been given the opportunity to propose superior non-rate terms and conditions to address such concerns.[169] We encourage network customers and transmission provider merchant functions to work with their transmission providers to explore ways to accommodate the more flexible use of designated network resources suggested by TAPS without adversely affecting other customers or the reliable operation of the system.

b. Transmission Customer

247. Section 1.49 of the *pro forma* OATT defines a Transmission Customer as ''Any Eligible Customer (or its Designated Agent) that (i) executes a Service Agreement, or (ii) requests in writing that the Transmission Provider file with the Commission, a proposed unexecuted Service Agreement to receive transmission service under Part II of the Tariff. This term is used in the Part I Common Service Provisions to include customers receiving transmission service under Part II and Part III of this Tariff.'' The Commission did not amend this definition in Order Nos. 890 or 890–A.

Requests for Rehearing and Clarification

248. Southern requests rehearing of the Commission's definition of Transmission Customer to include an eligible customer with an executed or proper unexecuted service agreement under Part II or Part III of the *pro forma* OATT. Southern contends that the existing reference in the second sentence of the definition merely relates to how the term is used in Part I and that the proposed revision is therefore necessary to avoid the implication that a transmission customer does not include network customers in other portions of the *pro forma* OATT.

Commission Determination

249. The Commission did not propose to amend the definition of Transmission Customer in the NOPR, nor did commenters propose such an amendment in response to the NOPR. As a result, the definition of Transmission Customer was not addressed in Order Nos. 890 or 890–A. Southern's request for rehearing is therefore beyond the scope of this proceeding.

III. Information Collection Statement

250. The Office of Management and Budget (OMB) regulations require that OMB approve certain information collection requirements imposed by an agency.[170] The revisions to the information collection requirements for transmission providers adopted in Order No. 890 were approved under OMB Control Nos. 1902–0233. This order further revises these requirements in order to more clearly state the obligations imposed in Order No. 890, but does not substantively alter those requirements. OMB approval of this order is therefore unnecessary. However, the Commission will send a copy of this order to OMB for informational purposes only.

IV. Document Availability

251. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

252. From FERC's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and

[164] *See* Order No. 890–A at P 1011.

[165] *See id.* P 1016.

[166] *See id.* P 1016.

[167] *See id.* P 1017.

[168] See *Midwest Indep. Sys. Operator, Inc.,* 123 FERC ¶ 61,154, at P 89 (2008).

[169] Order No. 888 at 31,770.

[170] 5 CFR 1320 (2007).

Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

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

V. Effective Date and Congressional Notification

254. Changes to Order Nos. 890 and 890–A adopted in this order on rehearing and clarification will become effective September 8, 2008.

By the Commission.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

The following appendices will not appear in the Code of Federal Regulations:

Appendix A: Petitioners' Acronyms

Abbreviation	Petitioner names
APPA Joint Filers	American Public Power Association, National Rural Electric Cooperative Association, Transmission Access Policy Study Group, and Transmission Dependent Utility Systems.
Cargill	Cargill Power Marketers, LLC.
Deseret	Desert Generation & Transmission Co-operative, Inc.
Duke	Duke Energy Corp.
East Texas Cooperatives	East Texas Electric Cooperative, Inc.; Northeast Texas Electric Cooperative, Inc.; Sam Rayburn Generation and Electric Cooperative, Inc. and Tex-La Electric Cooperative of Texas, Inc.
EEI	Edison Electric Institute.
Entergy	Entergy Services, Inc.
E.ON U.S.	E.ON U.S. LLC.
East Texas Cooperatives	East Texas Electric Cooperative, Inc.; Northeast Texas Electric Cooperative, Inc.; Sam Rayburn Generation and Electric Cooperative, Inc. and Tex-La Electric Cooperative of Texas, Inc.
FMPA	Florida Municipal Power Agency.
Florida Power	Florida Power & Light Co.
NRECA	National Rural Electric Cooperative Association.
NYISO	New York Independent System Operator.
Pacific Northwest IOUs	Avista Corp., Idaho Power Co., PacifiCorp, Portland General Electric Co., and Puget Sound Energy, Inc.
Schedule 20A Service Providers	Bangor Hydro-Electric Co., Boston Edison Co., Commonwealth Electric Co., and Cambridge Electric Light Co.
Sempra Global	Sempra Global.
Southern	Southern Company Services, Inc.
TranServ	TranServ International, Inc.
TAPS	Transmission Access Policy Study Group.
TDU Systems	Transmission Dependent Utilities Systems.

Appendix B—RM05–17–003 & RM05–25–003 (Issued)

Pro Forma Open Access Transmission Tariff

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I. Common Service Provisions

1 Definitions

1.1 Affiliate

With respect to a corporation, partnership or other entity, each such other corporation, partnership or other entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such corporation, partnership or other entity.

1.2 Ancillary Services

Those services that are necessary to support the transmission of capacity and energy from resources to loads while maintaining reliable operation of the Transmission Provider's Transmission System in accordance with Good Utility Practice.

1.3 Annual Transmission Costs

The total annual cost of the Transmission System for purposes of Network Integration Transmission Service shall be the amount specified in Attachment H until amended by the Transmission Provider or modified by the Commission.

1.4 Application

A request by an Eligible Customer for transmission service pursuant to the provisions of the Tariff.

1.5 Commission

The Federal Energy Regulatory Commission.

1.6 Completed Application

An Application that satisfies all of the information and other requirements of the Tariff, including any required deposit.

1.7 Control Area

An electric power system or combination of electric power systems to which a common automatic generation control scheme is applied in order to:

1. Match, at all times, the power output of the generators within the electric power system(s) and capacity and energy purchased from entities outside the electric power system(s), with the load within the electric power system(s);

2. Maintain scheduled interchange with other Control Areas, within the limits of Good Utility Practice;

3. maintain the frequency of the electric power system(s) within reasonable limits in accordance with Good Utility Practice; and

4. provide sufficient generating capacity to maintain operating reserves in accordance with Good Utility Practice.

1.8 Curtailment

A reduction in firm or non-firm transmission service in response to a transfer capability shortage as a result of system reliability conditions.

1.9 Delivering Party

The entity supplying capacity and energy to be transmitted at Point(s) of Receipt.

1.10 Designated Agent

Any entity that performs actions or functions on behalf of the Transmission Provider, an Eligible Customer, or the Transmission Customer required under the Tariff.

1.11 Direct Assignment Facilities

Facilities or portions of facilities that are constructed by the Transmission Provider for the sole use/benefit of a particular Transmission Customer requesting service under the Tariff. Direct Assignment Facilities shall be specified in the Service Agreement that governs service to the Transmission Customer and shall be subject to Commission approval.

1.12 Eligible Customer

i. Any electric utility (including the Transmission Provider and any power marketer), Federal power marketing agency, or any person generating electric energy for sale for resale is an Eligible Customer under the Tariff. Electric energy sold or produced by such entity may be electric energy produced in the United States, Canada or Mexico. However, with respect to transmission service that the Commission is prohibited from ordering by section 212(h) of the Federal Power Act, such entity is eligible only if the service is provided pursuant to a state requirement that the Transmission Provider offer the unbundled transmission service, or pursuant to a voluntary offer of such service by the Transmission Provider.

ii. Any retail customer taking unbundled transmission service pursuant to a state requirement that the Transmission Provider offer the transmission service, or pursuant to a voluntary offer of such service by the Transmission Provider, is an Eligible Customer under the Tariff.

1.13 Facilities Study

An engineering study conducted by the Transmission Provider to determine the required modifications to the Transmission Provider's Transmission System, including the cost and scheduled completion date for such modifications, that will be required to provide the requested transmission service.

1.14 Firm Point-To-Point Transmission Service

Transmission Service under this Tariff that is reserved and/or scheduled

between specified Points of Receipt and Delivery pursuant to Part II of this Tariff.

1.15 Good Utility Practice

Any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region, including those practices required by Federal Power Act section 215(a)(4).

1.16 Interruption

A reduction in non-firm transmission service due to economic reasons pursuant to section 14.7.

1.17 Load Ratio Share

Ratio of a Transmission Customer's Network Load to the Transmission Provider's total load computed in accordance with sections 34.2 and 34.3 of the Network Integration Transmission Service under Part III of the Tariff and calculated on a rolling twelve month basis.

1.18 Load Shedding

The systematic reduction of system demand by temporarily decreasing load in response to transmission system or area capacity shortages, system instability, or voltage control considerations under Part III of the Tariff.

1.19 Long-Term Firm Point-To-Point Transmission Service

Firm Point-To-Point Transmission Service under Part II of the Tariff with a term of one year or more.

1.20 Native Load Customers

The wholesale and retail power customers of the Transmission Provider on whose behalf the Transmission Provider, by statute, franchise, regulatory requirement, or contract, has undertaken an obligation to construct and operate the Transmission Provider's system to meet the reliable electric needs of such customers.

1.21 Network Customer

An entity receiving transmission service pursuant to the terms of the Transmission Provider's Network Integration Transmission Service under Part III of the Tariff.

1.22 Network Integration Transmission Service

The transmission service provided under Part III of the Tariff.

1.23 Network Load

The load that a Network Customer designates for Network Integration Transmission Service under Part III of the Tariff. The Network Customer's Network Load shall include all load served by the output of any Network Resources designated by the Network Customer. A Network Customer may elect to designate less than its total load as Network Load but may not designate only part of the load at a discrete Point of Delivery. Where an Eligible Customer has elected not to designate a particular load at discrete points of delivery as Network Load, the Eligible Customer is responsible for making separate arrangements under Part II of the Tariff for any Point-To-Point Transmission Service that may be necessary for such non-designated load.

1.24 Network Operating Agreement

An executed agreement that contains the terms and conditions under which the Network Customer shall operate its facilities and the technical and operational matters associated with the implementation of Network Integration Transmission Service under Part III of the Tariff.

1.25 Network Operating Committee

A group made up of representatives from the Network Customer(s) and the Transmission Provider established to coordinate operating criteria and other technical considerations required for implementation of Network Integration Transmission Service under Part III of this Tariff.

1.26 Network Resource

Any designated generating resource owned, purchased or leased by a Network Customer under the Network Integration Transmission Service Tariff. Network Resources do not include any resource, or any portion thereof, that is committed for sale to third parties or otherwise cannot be called upon to meet the Network Customer's Network Load on a non-interruptible basis, except for purposes of fulfilling obligations under a reserve sharing program.

1.27 Network Upgrades

Modifications or additions to transmission-related facilities that are integrated with and support the Transmission Provider's overall Transmission System for the general benefit of all users of such Transmission System.

1.28 Non-Firm Point-To-Point Transmission Service

Point-To-Point Transmission Service under the Tariff that is reserved and scheduled on an as-available basis and is subject to Curtailment or Interruption as set forth in Section 14.7 under Part II of this Tariff. Non-Firm Point-To-Point Transmission Service is available on a stand-alone basis for periods ranging from one hour to one month.

1.29 Non-Firm Sale

An energy sale for which receipt or delivery may be interrupted for any reason or no reason, without liability on the part of either the buyer or seller.

1.30 Open Access Same-Time Information System (OASIS)

The information system and standards of conduct contained in Part 37 of the Commission's regulations and all additional requirements implemented by subsequent Commission orders dealing with OASIS.

1.31 Part I

Tariff Definitions and Common Service Provisions contained in Sections 2 through 12.

1.32 Part II

Tariff Sections 13 through 27 pertaining to Point-To-Point Transmission Service in conjunction with the applicable Common Service Provisions of Part I and appropriate Schedules and Attachments.

1.33 Part III

Tariff Sections 28 through 35 pertaining to Network Integration Transmission Service in conjunction with the applicable Common Service Provisions of Part I and appropriate Schedules and Attachments.

1.34 Parties

The Transmission Provider and the Transmission Customer receiving service under the Tariff.

1.35 Point(s) of Delivery

Point(s) on the Transmission Provider's Transmission System where capacity and energy transmitted by the Transmission Provider will be made available to the Receiving Party under Part II of the Tariff. The Point(s) of Delivery shall be specified in the Service Agreement for Long-Term Firm Point-To-Point Transmission Service.

1.36 Point(s) of Receipt

Point(s) of interconnection on the Transmission Provider's Transmission System where capacity and energy will be made available to the Transmission Provider by the Delivering Party under Part II of the Tariff. The Point(s) of Receipt shall be specified in the Service Agreement for Long-Term Firm Point-To-Point Transmission Service.

1.37 Point-To-Point Transmission Service

The reservation and transmission of capacity and energy on either a firm or non-firm basis from the Point(s) of Receipt to the Point(s) of Delivery under Part II of the Tariff.

1.38 Power Purchaser

The entity that is purchasing the capacity and energy to be transmitted under the Tariff.

1.39 Pre-Confirmed Application

An Application that commits the Eligible Customer to execute a Service Agreement upon receipt of notification that the Transmission Provider can provide the requested Transmission Service.

1.40 Receiving Party

The entity receiving the capacity and energy transmitted by the Transmission Provider to Point(s) of Delivery.

1.41 Regional Transmission Group (RTG)

A voluntary organization of transmission owners, transmission users and other entities approved by the Commission to efficiently coordinate transmission planning (and expansion), operation and use on a regional (and interregional) basis.

1.42 Reserved Capacity

The maximum amount of capacity and energy that the Transmission Provider agrees to transmit for the Transmission Customer over the Transmission Provider's Transmission System between the Point(s) of Receipt and the Point(s) of Delivery under Part II of the Tariff. Reserved Capacity shall be expressed in terms of whole megawatts on a sixty (60) minute interval (commencing on the clock hour) basis.

1.43 Service Agreement

The initial agreement and any amendments or supplements thereto entered into by the Transmission Customer and the Transmission Provider for service under the Tariff.

1.44 Service Commencement Date

The date the Transmission Provider begins to provide service pursuant to the terms of an executed Service Agreement, or the date the Transmission Provider begins to provide service in accordance with Section 15.3 or Section 29.1 under the Tariff.

1.45 Short-Term Firm Point-To-Point Transmission Service

Firm Point-To-Point Transmission Service under Part II of the Tariff with a term of less than one year.

1.46 System Condition

A specified condition on the Transmission Provider's system or on a neighboring system, such as a constrained transmission element or flowgate, that may trigger Curtailment of Long-Term Firm Point-to-Point Transmission Service using the curtailment priority pursuant to Section 13.6. Such conditions must be identified in the Transmission Customer's Service Agreement.

1.47 System Impact Study

An assessment by the Transmission Provider of (i) the adequacy of the Transmission System to accommodate a request for either Firm Point-To-Point Transmission Service or Network Integration Transmission Service and (ii) whether any additional costs may be incurred in order to provide transmission service.

1.48 Third-Party Sale

Any sale for resale in interstate commerce to a Power Purchaser that is not designated as part of Network Load under the Network Integration Transmission Service.

1.49 Transmission Customer

Any Eligible Customer (or its Designated Agent) that (i) executes a Service Agreement, or (ii) requests in writing that the Transmission Provider file with the Commission, a proposed unexecuted Service Agreement to receive transmission service under Part II of the Tariff. This term is used in the Part I Common Service Provisions to include customers receiving transmission service under Part II and Part III of this Tariff.

1.50 Transmission Provider

The public utility (or its Designated Agent) that owns, controls, or operates facilities used for the transmission of electric energy in interstate commerce and provides transmission service under the Tariff.

1.51 Transmission Provider's Monthly Transmission System Peak

The maximum firm usage of the Transmission Provider's Transmission System in a calendar month.

1.52 Transmission Service

Point-To-Point Transmission Service provided under Part II of the Tariff on a firm and non-firm basis.

1.53 Transmission System

The facilities owned, controlled or operated by the Transmission Provider that are used to provide transmission service under Part II and Part III of the Tariff.

2 Initial Allocation and Renewal Procedures

2.1 Initial Allocation of Available Transfer Capability

For purposes of determining whether existing capability on the Transmission Provider's Transmission System is adequate to accommodate a request for firm service under this Tariff, all Completed Applications for new firm transmission service received during the initial sixty (60) day period commencing with the effective date of the Tariff will be deemed to have been filed simultaneously. A lottery system conducted by an independent party shall be used to assign priorities for Completed Applications filed simultaneously. All Completed Applications for firm transmission service received after the initial sixty (60) day period shall be assigned a priority pursuant to Section 13.2.

2.2 Reservation Priority for Existing Firm Service Customers

Existing firm service customers (wholesale requirements and transmission-only, with a contract term of five years or more), have the right to continue to take transmission service from the Transmission Provider when the contract expires, rolls over or is renewed. This transmission reservation priority is independent of whether the existing customer continues to purchase capacity and energy from the Transmission Provider or elects to purchase capacity and energy from another supplier. If at the end of the contract term, the Transmission Provider's Transmission System cannot accommodate all of the requests for transmission service, the existing firm service customer must agree to accept a contract term at least equal to a competing request by any new Eligible Customer and to pay the current just and reasonable rate, as approved by the Commission, for such service; provided

that, the firm service customer shall have a right of first refusal at the end of such service only if the new contract is for five years or more. The existing firm service customer must provide notice to the Transmission Provider whether it will exercise its right of first refusal no less than one year prior to the expiration date of its transmission service agreement. This transmission reservation priority for existing firm service customers is an ongoing right that may be exercised at the end of all firm contract terms of five years or longer. Service agreements subject to a right of first refusal entered into prior to [the date of the Transmission Provider's filing adopting the reformed rollover language herein in compliance with Order No. 890] or associated with a transmission service request received prior to July 13, 2007, unless terminated, will become subject to the five year/one year requirement on the first rollover date after [the date of the Transmission Provider's filing adopting the reformed rollover language herein in compliance with Order No. 890]; provided that, the one-year notice requirement shall apply to such service agreements with five years or more left in their terms as of the [date of the Transmission Provider's filing adopting the reformed rollover language herein in compliance with Order No. 890].

3 Ancillary Services

Ancillary Services are needed with transmission service to maintain reliability within and among the Control Areas affected by the transmission service. The Transmission Provider is required to provide (or offer to arrange with the local Control Area operator as discussed below), and the Transmission Customer is required to purchase, the following Ancillary Services (i) Scheduling, System Control and Dispatch, and (ii) Reactive Supply and Voltage Control from Generation or Other Sources.

The Transmission Provider is required to offer to provide (or offer to arrange with the local Control Area operator as discussed below) the following Ancillary Services only to the Transmission Customer serving load within the Transmission Provider's Control Area (i) Regulation and Frequency Response, (ii) Energy Imbalance, (iii) Operating Reserve—Spinning, and (iv) Operating Reserve—Supplemental. The Transmission Customer serving load within the Transmission Provider's Control Area is required to acquire these Ancillary Services, whether from the Transmission Provider, from a third party, or by self-supply.

The Transmission Provider is required to provide (or offer to arrange with the local Control Area Operator as discussed below), to the extent it is physically feasible to do so from its resources or from resources available to it, Generator Imbalance Service when Transmission Service is used to deliver energy from a generator located within its Control Area. The Transmission Customer using Transmission Service to deliver energy from a generator located within the Transmission Provider's Control Area is required to acquire Generator Imbalance Service, whether from the Transmission Provider, from a third party, or by self-supply.

The Transmission Customer may not decline the Transmission Provider's offer of Ancillary Services unless it demonstrates that it has acquired the Ancillary Services from another source. The Transmission Customer must list in its Application which Ancillary Services it will purchase from the Transmission Provider. A Transmission Customer that exceeds its firm reserved capacity at any Point of Receipt or Point of Delivery or an Eligible Customer that uses Transmission Service at a Point of Receipt or Point of Delivery that it has not reserved is required to pay for all of the Ancillary Services identified in this section that were provided by the Transmission Provider associated with the unreserved service. The Transmission Customer or Eligible Customer will pay for Ancillary Services based on the amount of transmission service it used but did not reserve.

If the Transmission Provider is a public utility providing transmission service but is not a Control Area operator, it may be unable to provide some or all of the Ancillary Services. In this case, the Transmission Provider can fulfill its obligation to provide Ancillary Services by acting as the Transmission Customer's agent to secure these Ancillary Services from the Control Area operator. The Transmission Customer may elect to (i) have the Transmission Provider act as its agent, (ii) secure the Ancillary Services directly from the Control Area operator, or (iii) secure the Ancillary Services (discussed in Schedules 3, 4, 5, 6 and 9) from a third party or by self-supply when technically feasible.

The Transmission Provider shall specify the rate treatment and all related terms and conditions in the event of an unauthorized use of Ancillary Services by the Transmission Customer.

The specific Ancillary Services, prices and/or compensation methods are described on the Schedules that are attached to and made a part of the Tariff. Three principal requirements apply to discounts for Ancillary Services provided by the Transmission Provider in conjunction with its provision of transmission service as follows: (1) Any offer of a discount made by the Transmission Provider must be announced to all Eligible Customers solely by posting on the OASIS, (2) any customer-initiated requests for discounts (including requests for use by one's wholesale merchant or an Affiliate's use) must occur solely by posting on the OASIS, and (3) once a discount is negotiated, details must be immediately posted on the OASIS. A discount agreed upon for an Ancillary Service must be offered for the same period to all Eligible Customers on the Transmission Provider's system. Sections 3.1 through 3.7 below list the seven Ancillary Services.

3.1 Scheduling, System Control and Dispatch Service

The rates and/or methodology are described in Schedule 1.

3.2 Reactive Supply and Voltage Control From Generation or Other Sources Service

The rates and/or methodology are described in Schedule 2.

3.3 Regulation and Frequency Response Service

Where applicable the rates and/or methodology are described in Schedule 3.

3.4 Energy Imbalance Service

Where applicable the rates and/or methodology are described in Schedule 4.

3.5 Operating Reserve—Spinning Reserve Service

Where applicable the rates and/or methodology are described in Schedule 5.

3.6 Operating Reserve—Supplemental Reserve Service

Where applicable the rates and/or methodology are described in Schedule 6.

3.7 Generator Imbalance Service

Where applicable the rates and/or methodology are described in Schedule 9.

4 Open Access Same-Time Information System (OASIS)

Terms and conditions regarding Open Access Same-Time Information System and standards of conduct are set forth in 18 CFR part 37 of the Commission's

regulations (Open Access Same-Time Information System and Standards of Conduct for Public Utilities) and 18 CFR part 38 of the Commission's regulations (Business Practice Standards and Communication Protocols for Public Utilities). In the event available transfer capability as posted on the OASIS is insufficient to accommodate a request for firm transmission service, additional studies may be required as provided by this Tariff pursuant to Sections 19 and 32.

The Transmission Provider shall post on OASIS and its public Web site an electronic link to all rules, standards and practices that (i) relate to the terms and conditions of transmission service, (ii) are not subject to a North American Energy Standards Board (NAESB) copyright restriction, and (iii) are not otherwise included in this Tariff. The Transmission Provider shall post on OASIS and on its public Web site an electronic link to the NAESB Web site where any rules, standards and practices that are protected by copyright may be obtained. The Transmission Provider shall also post on OASIS and its public Web site an electronic link to a statement of the process by which the Transmission Provider shall add, delete or otherwise modify the rules, standards and practices that are not included in this tariff. Such process shall set forth the means by which the Transmission Provider shall provide reasonable advance notice to Transmission Customers and Eligible Customers of any such additions, deletions or modifications, the associated effective date, and any additional implementation procedures that the Transmission Provider deems appropriate.

5 Local Furnishing Bonds

5.1 Transmission Providers That Own Facilities Financed by Local Furnishing Bonds

This provision is applicable only to Transmission Providers that have financed facilities for the local furnishing of electric energy with tax-exempt bonds, as described in Section 142(f) of the Internal Revenue Code (''local furnishing bonds''). Notwithstanding any other provision of this Tariff, the Transmission Provider shall not be required to provide transmission service to any Eligible Customer pursuant to this Tariff if the provision of such transmission service would jeopardize the tax-exempt status of any local furnishing bond(s) used to finance the Transmission Provider's facilities that would be used in providing such transmission service.

5.2 Alternative Procedures for Requesting Transmission Service

(i) If the Transmission Provider determines that the provision of transmission service requested by an Eligible Customer would jeopardize the tax-exempt status of any local furnishing bond(s) used to finance its facilities that would be used in providing such transmission service, it shall advise the Eligible Customer within thirty (30) days of receipt of the Completed Application.

(ii) If the Eligible Customer thereafter renews its request for the same transmission service referred to in (i) by tendering an application under Section 211 of the Federal Power Act, the Transmission Provider, within ten (10) days of receiving a copy of the Section 211 application, will waive its rights to a request for service under Section 213(a) of the Federal Power Act and to the issuance of a proposed order under Section 212(c) of the Federal Power Act. The Commission, upon receipt of the Transmission Provider's waiver of its rights to a request for service under Section 213(a) of the Federal Power Act and to the issuance of a proposed order under Section 212(c) of the Federal Power Act, shall issue an order under Section 211 of the Federal Power Act. Upon issuance of the order under Section 211 of the Federal Power Act, the Transmission Provider shall be required to provide the requested transmission service in accordance with the terms and conditions of this Tariff.

6 Reciprocity

A Transmission Customer receiving transmission service under this Tariff agrees to provide comparable transmission service that it is capable of providing to the Transmission Provider on similar terms and conditions over facilities used for the transmission of electric energy owned, controlled or operated by the Transmission Customer and over facilities used for the transmission of electric energy owned, controlled or operated by the Transmission Customer's corporate Affiliates. A Transmission Customer that is a member of, or takes transmission service from, a power pool, Regional Transmission Group, Regional Transmission Organization (RTO), Independent System Operator (ISO) or other transmission organization approved by the Commission for the operation of transmission facilities also agrees to provide comparable transmission service to the transmission-owning members of such power pool and Regional Transmission Group, RTO, ISO or other transmission organization on similar terms and conditions over facilities used for the transmission of electric energy owned, controlled or operated by the Transmission Customer and over facilities used for the transmission of electric energy owned, controlled or operated by the Transmission Customer's corporate Affiliates.

This reciprocity requirement applies not only to the Transmission Customer that obtains transmission service under the Tariff, but also to all parties to a transaction that involves the use of transmission service under the Tariff, including the power seller, buyer and any intermediary, such as a power marketer. This reciprocity requirement also applies to any Eligible Customer that owns, controls or operates transmission facilities that uses an intermediary, such as a power marketer, to request transmission service under the Tariff. If the Transmission Customer does not own, control or operate transmission facilities, it must include in its Application a sworn statement of one of its duly authorized officers or other representatives that the purpose of its Application is not to assist an Eligible Customer to avoid the requirements of this provision.

7 Billing and Payment

7.1 Billing Procedure

Within a reasonable time after the first day of each month, the Transmission Provider shall submit an invoice to the Transmission Customer for the charges for all services furnished under the Tariff during the preceding month. The invoice shall be paid by the Transmission Customer within twenty (20) days of receipt. All payments shall be made in immediately available funds payable to the Transmission Provider, or by wire transfer to a bank named by the Transmission Provider.

7.2 Interest on Unpaid Balances

Interest on any unpaid amounts (including amounts placed in escrow) shall be calculated in accordance with the methodology specified for interest on refunds in the Commission's regulations at 18 CFR 35.19a(a)(2)(iii). Interest on delinquent amounts shall be calculated from the due date of the bill to the date of payment. When payments are made by mail, bills shall be considered as having been paid on the date of receipt by the Transmission Provider.

7.3 Customer Default

In the event the Transmission Customer fails, for any reason other than a billing dispute as described below, to

make payment to the Transmission Provider on or before the due date as described above, and such failure of payment is not corrected within thirty (30) calendar days after the Transmission Provider notifies the Transmission Customer to cure such failure, a default by the Transmission Customer shall be deemed to exist. Upon the occurrence of a default, the Transmission Provider may initiate a proceeding with the Commission to terminate service but shall not terminate service until the Commission so approves any such request. In the event of a billing dispute between the Transmission Provider and the Transmission Customer, the Transmission Provider will continue to provide service under the Service Agreement as long as the Transmission Customer (i) continues to make all payments not in dispute, and (ii) pays into an independent escrow account the portion of the invoice in dispute, pending resolution of such dispute. If the Transmission Customer fails to meet these two requirements for continuation of service, then the Transmission Provider may provide notice to the Transmission Customer of its intention to suspend service in sixty (60) days, in accordance with Commission policy.

8 Accounting for the Transmission Provider's Use of the Tariff

The Transmission Provider shall record the following amounts, as outlined below.

8.1 Transmission Revenues

Include in a separate operating revenue account or subaccount the revenues it receives from Transmission Service when making Third-Party Sales under Part II of the Tariff.

8.2 Study Costs and Revenues

Include in a separate transmission operating expense account or subaccount, costs properly chargeable to expense that are incurred to perform any System Impact Studies or Facilities Studies which the Transmission Provider conducts to determine if it must construct new transmission facilities or upgrades necessary for its own uses, including making Third-Party Sales under the Tariff; and include in a separate operating revenue account or subaccount the revenues received for System Impact Studies or Facilities Studies performed when such amounts are separately stated and identified in the Transmission Customer's billing under the Tariff.

9 Regulatory Filings

Nothing contained in the Tariff or any Service Agreement shall be construed as affecting in any way the right of the Transmission Provider to unilaterally make application to the Commission for a change in rates, terms and conditions, charges, classification of service, Service Agreement, rule or regulation under Section 205 of the Federal Power Act and pursuant to the Commission's rules and regulations promulgated thereunder.

Nothing contained in the Tariff or any Service Agreement shall be construed as affecting in any way the ability of any Party receiving service under the Tariff to exercise its rights under the Federal Power Act and pursuant to the Commission's rules and regulations promulgated thereunder.

10 Force Majeure and Indemnification

10.1 Force Majeure

An event of Force Majeure means any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, any Curtailment, order, regulation or restriction imposed by governmental military or lawfully established civilian authorities, or any other cause beyond a Party's control. A Force Majeure event does not include an act of negligence or intentional wrongdoing. Neither the Transmission Provider nor the Transmission Customer will be considered in default as to any obligation under this Tariff if prevented from fulfilling the obligation due to an event of Force Majeure. However, a Party whose performance under this Tariff is hindered by an event of Force Majeure shall make all reasonable efforts to perform its obligations under this Tariff.

10.2 Indemnification

The Transmission Customer shall at all times indemnify, defend, and save the Transmission Provider harmless from, any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demands, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the Transmission Provider's performance of its obligations under this Tariff on behalf of the Transmission Customer, except in cases of negligence or intentional wrongdoing by the Transmission Provider.

11 Creditworthiness

The Transmission Provider will specify its Creditworthiness procedures in Attachment L.

12 Dispute Resolution Procedures

12.1 Internal Dispute Resolution Procedures

Any dispute between a Transmission Customer and the Transmission Provider involving transmission service under the Tariff (excluding applications for rate changes or other changes to the Tariff, or to any Service Agreement entered into under the Tariff, which shall be presented directly to the Commission for resolution) shall be referred to a designated senior representative of the Transmission Provider and a senior representative of the Transmission Customer for resolution on an informal basis as promptly as practicable. In the event the designated representatives are unable to resolve the dispute within thirty (30) days [or such other period as the Parties may agree upon] by mutual agreement, such dispute may be submitted to arbitration and resolved in accordance with the arbitration procedures set forth below.

12.2 External Arbitration Procedures

Any arbitration initiated under the Tariff shall be conducted before a single neutral arbitrator appointed by the Parties. If the Parties fail to agree upon a single arbitrator within ten (10) days of the referral of the dispute to arbitration, each Party shall choose one arbitrator who shall sit on a three-member arbitration panel. The two arbitrators so chosen shall within twenty (20) days select a third arbitrator to chair the arbitration panel. In either case, the arbitrators shall be knowledgeable in electric utility matters, including electric transmission and bulk power issues, and shall not have any current or past substantial business or financial relationships with any party to the arbitration (except prior arbitration). The arbitrator(s) shall provide each of the Parties an opportunity to be heard and, except as otherwise provided herein, shall generally conduct the arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association and any applicable Commission regulations or Regional Transmission Group rules.

12.3 Arbitration Decisions

Unless otherwise agreed, the arbitrator(s) shall render a decision within ninety (90) days of appointment and shall notify the Parties in writing of

such decision and the reasons therefor. The arbitrator(s) shall be authorized only to interpret and apply the provisions of the Tariff and any Service Agreement entered into under the Tariff and shall have no power to modify or change any of the above in any manner. The decision of the arbitrator(s) shall be final and binding upon the Parties, and judgment on the award may be entered in any court having jurisdiction. The decision of the arbitrator(s) may be appealed solely on the grounds that the conduct of the arbitrator(s), or the decision itself, violated the standards set forth in the Federal Arbitration Act and/or the Administrative Dispute Resolution Act. The final decision of the arbitrator must also be filed with the Commission if it affects jurisdictional rates, terms and conditions of service or facilities.

12.4 Costs

Each Party shall be responsible for its own costs incurred during the arbitration process and for the following costs, if applicable:

1. The cost of the arbitrator chosen by the Party to sit on the three member panel and one half of the cost of the third arbitrator chosen; or
2. One half the cost of the single arbitrator jointly chosen by the Parties.

12.5 Rights Under The Federal Power Act

Nothing in this section shall restrict the rights of any party to file a Complaint with the Commission under relevant provisions of the Federal Power Act.

II. Point-To-Point Transmission Service

Preamble

The Transmission Provider will provide Firm and Non-Firm Point-To-Point Transmission Service pursuant to the applicable terms and conditions of this Tariff. Point-To-Point Transmission Service is for the receipt of capacity and energy at designated Point(s) of Receipt and the transfer of such capacity and energy to designated Point(s) of Delivery.

13 Nature of Firm Point-To-Point Transmission Service

13.1 Term

The minimum term of Firm Point-To-Point Transmission Service shall be one day and the maximum term shall be specified in the Service Agreement.

13.2 Reservation Priority

(i) Long-Term Firm Point-To-Point Transmission Service shall be available on a first-come, first-served basis, *i.e.*, in the chronological sequence in which each Transmission Customer has requested service.

(ii) Reservations for Short-Term Firm Point-To-Point Transmission Service will be conditional based upon the length of the requested transaction or reservation. However, Pre-Confirmed Applications for Short-Term Point-To-Point Transmission Service will receive priority over earlier-submitted requests that are not Pre-Confirmed and that have equal or shorter duration. Among requests or reservations with the same duration and, as relevant, pre-confirmation status (pre-confirmed, confirmed, or not confirmed), priority will be given to an Eligible Customer's request or reservation that offers the highest price, followed by the date and time of the request or reservation.

(iii) If the Transmission System becomes oversubscribed, requests for service may preempt competing reservations up to the following conditional reservation deadlines: One day before the commencement of daily service, one week before the commencement of weekly service, and one month before the commencement of monthly service. Before the conditional reservation deadline, if available transfer capability is insufficient to satisfy all requests and reservations, an Eligible Customer with a reservation for shorter term service or equal duration service and lower price has the right of first refusal to match any longer term request or equal duration service with a higher price before losing its reservation priority. A longer term competing request for Short-Term Firm Point-To-Point Transmission Service will be granted if the Eligible Customer with the right of first refusal does not agree to match the competing request within 24 hours (or earlier if necessary to comply with the scheduling deadlines provided in section 13.8) from being notified by the Transmission Provider of a longer-term competing request for Short-Term Firm Point-To-Point Transmission Service. When a longer duration request preempts multiple shorter duration reservations, the shorter duration reservations shall have simultaneous opportunities to exercise the right of first refusal. Duration, price and time of response will be used to determine the order by which the multiple shorter duration reservations will be able to exercise the right of first refusal. After the conditional reservation deadline, service will commence pursuant to the terms of Part II of the Tariff.

(iv) Firm Point-To-Point Transmission Service will always have a reservation priority over Non-Firm Point-To-Point Transmission Service under the Tariff. All Long-Term Firm Point-To-Point Transmission Service will have equal reservation priority with Native Load Customers and Network Customers. Reservation priorities for existing firm service customers are provided in Section 2.2.

13.3 Use of Firm Transmission Service by the Transmission Provider

The Transmission Provider will be subject to the rates, terms and conditions of Part II of the Tariff when making Third-Party Sales under (i) agreements executed on or after September 8, 2008 or (ii) agreements executed prior to the aforementioned date that the Commission requires to be unbundled, by the date specified by the Commission. The Transmission Provider will maintain separate accounting, pursuant to Section 8, for any use of the Point-To-Point Transmission Service to make Third-Party Sales.

13.4 Service Agreements

The Transmission Provider shall offer a standard form Firm Point-To-Point Transmission Service Agreement (Attachment A) to an Eligible Customer when it submits a Completed Application for Long-Term Firm Point-To-Point Transmission Service. The Transmission Provider shall offer a standard form Firm Point-To-Point Transmission Service Agreement (Attachment A) to an Eligible Customer when it first submits a Completed Application for Short-Term Firm Point-To-Point Transmission Service pursuant to the Tariff. Executed Service Agreements that contain the information required under the Tariff shall be filed with the Commission in compliance with applicable Commission regulations. An Eligible Customer that uses Transmission Service at a Point of Receipt or Point of Delivery that it has not reserved and that has not executed a Service Agreement will be deemed, for purposes of assessing any appropriate charges and penalties, to have executed the appropriate Service Agreement. The Service Agreement shall, when applicable, specify any conditional curtailment options selected by the Transmission Customer. Where the Service Agreement contains conditional curtailment options and is subject to a biennial reassessment as described in Section 15.4, the Transmission Provider shall provide the Transmission Customer notice of any changes to the curtailment conditions no less than 90 days prior to the date for imposition of new curtailment conditions. Concurrent with such notice, the Transmission Provider shall provide the Transmission

Customer with the reassessment study and a narrative description of the study, including the reasons for changes to the number of hours per year or System Conditions under which conditional curtailment may occur.

13.5 Transmission Customer Obligations for Facility Additions or Redispatch Costs

In cases where the Transmission Provider determines that the Transmission System is not capable of providing Firm Point-To-Point Transmission Service without (1) degrading or impairing the reliability of service to Native Load Customers, Network Customers and other Transmission Customers taking Firm Point-To-Point Transmission Service, or (2) interfering with the Transmission Provider's ability to meet prior firm contractual commitments to others, the Transmission Provider will be obligated to expand or upgrade its Transmission System pursuant to the terms of Section 15.4. The Transmission Customer must agree to compensate the Transmission Provider for any necessary transmission facility additions pursuant to the terms of Section 27. To the extent the Transmission Provider can relieve any system constraint by redispatching the Transmission Provider's resources, it shall do so, provided that the Eligible Customer agrees to compensate the Transmission Provider pursuant to the terms of Section 27 and agrees to either (i) compensate the Transmission Provider for any necessary transmission facility additions or (ii) accept the service subject to a biennial reassessment by the Transmission Provider of redispatch requirements as described in Section 15.4. Any redispatch, Network Upgrade or Direct Assignment Facilities costs to be charged to the Transmission Customer on an incremental basis under the Tariff will be specified in the Service Agreement prior to initiating service.

13.6 Curtailment of Firm Transmission Service

In the event that a Curtailment on the Transmission Provider's Transmission System, or a portion thereof, is required to maintain reliable operation of such system and the system directly and indirectly interconnected with Transmission Provider's Transmission System, Curtailments will be made on a non-discriminatory basis to the transaction(s) that effectively relieve the constraint. Transmission Provider may elect to implement such Curtailments pursuant to the Transmission Loading Relief procedures specified in Attachment J. If multiple transactions require Curtailment, to the extent practicable and consistent with Good Utility Practice, the Transmission Provider will curtail service to Network Customers and Transmission Customers taking Firm Point-To-Point Transmission Service on a basis comparable to the curtailment of service to the Transmission Provider's Native Load Customers. All Curtailments will be made on a non-discriminatory basis, however, Non-Firm Point-To-Point Transmission Service shall be subordinate to Firm Transmission Service. Long-Term Firm Point-To-Point Service subject to conditions described in Section 15.4 shall be curtailed with secondary service in cases where the conditions apply, but otherwise will be curtailed on a pro rata basis with other Firm Transmission Service. When the Transmission Provider determines that an electrical emergency exists on its Transmission System and implements emergency procedures to Curtail Firm Transmission Service, the Transmission Customer shall make the required reductions upon request of the Transmission Provider. However, the Transmission Provider reserves the right to Curtail, in whole or in part, any Firm Transmission Service provided under the Tariff when, in the Transmission Provider's sole discretion, an emergency or other unforeseen condition impairs or degrades the reliability of its Transmission System. The Transmission Provider will notify all affected Transmission Customers in a timely manner of any scheduled Curtailments.

13.7 Classification of Firm Transmission Service

(a) The Transmission Customer taking Firm Point-To-Point Transmission Service may (1) change its Receipt and Delivery Points to obtain service on a non-firm basis consistent with the terms of Section 22.1 or (2) request a modification of the Points of Receipt or Delivery on a firm basis pursuant to the terms of Section 22.2.

(b) The Transmission Customer may purchase transmission service to make sales of capacity and energy from multiple generating units that are on the Transmission Provider's Transmission System. For such a purchase of transmission service, the resources will be designated as multiple Points of Receipt, unless the multiple generating units are at the same generating plant in which case the units would be treated as a single Point of Receipt.

(c) The Transmission Provider shall provide firm deliveries of capacity and energy from the Point(s) of Receipt to the Point(s) of Delivery. Each Point of Receipt at which firm transmission capacity is reserved by the Transmission Customer shall be set forth in the Firm Point-To-Point Service Agreement for Long-Term Firm Transmission Service along with a corresponding capacity reservation associated with each Point of Receipt. Points of Receipt and corresponding capacity reservations shall be as mutually agreed upon by the Parties for Short-Term Firm Transmission. Each Point of Delivery at which firm transfer capability is reserved by the Transmission Customer shall be set forth in the Firm Point-To-Point Service Agreement for Long-Term Firm Transmission Service along with a corresponding capacity reservation associated with each Point of Delivery. Points of Delivery and corresponding capacity reservations shall be as mutually agreed upon by the Parties for Short-Term Firm Transmission. The greater of either (1) the sum of the capacity reservations at the Point(s) of Receipt, or (2) the sum of the capacity reservations at the Point(s) of Delivery shall be the Transmission Customer's Reserved Capacity. The Transmission Customer will be billed for its Reserved Capacity under the terms of Schedule 7. The Transmission Customer may not exceed its firm capacity reserved at each Point of Receipt and each Point of Delivery except as otherwise specified in Section 22. The Transmission Provider shall specify the rate treatment and all related terms and conditions applicable in the event that a Transmission Customer (including Third-Party Sales by the Transmission Provider) exceeds its firm reserved capacity at any Point of Receipt or Point of Delivery or uses Transmission Service at a Point of Receipt or Point of Delivery that it has not reserved.

13.8 Scheduling of Firm Point-To-Point Transmission Service

Schedules for the Transmission Customer's Firm Point-To-Point Transmission Service must be submitted to the Transmission Provider no later than *10 a.m.* [or a reasonable time that is generally accepted in the region and is consistently adhered to by the Transmission Provider] of the day prior to commencement of such service. Schedules submitted after 10 a.m. will be accommodated, if practicable. Hour-to-hour schedules of any capacity and energy that is to be delivered must be stated in increments of 1,000 kW per hour [or a reasonable increment that is generally accepted in the region and is consistently adhered to by the Transmission Provider]. Transmission Customers within the Transmission Provider's service area with multiple requests for Transmission Service at a

Point of Receipt, each of which is under 1,000 kW per hour, may consolidate their service requests at a common point of receipt into units of 1,000 kW per hour for scheduling and billing purposes. Scheduling changes will be permitted up to *twenty (20) minutes* [or a reasonable time that is generally accepted in the region and is consistently adhered to by the Transmission Provider] before the start of the next clock hour provided that the Delivering Party and Receiving Party also agree to the schedule modification. The Transmission Provider will furnish to the Delivering Party's system operator, hour-to-hour schedules equal to those furnished by the Receiving Party (unless reduced for losses) and shall deliver the capacity and energy provided by such schedules. Should the Transmission Customer, Delivering Party or Receiving Party revise or terminate any schedule, such party shall immediately notify the Transmission Provider, and the Transmission Provider shall have the right to adjust accordingly the schedule for capacity and energy to be received and to be delivered.

14 Nature of Non-Firm Point-To-Point Transmission Service

14.1 Term

Non-Firm Point-To-Point Transmission Service will be available for periods ranging from one (1) hour to one (1) month. However, a Purchaser of Non-Firm Point-To-Point Transmission Service will be entitled to reserve a sequential term of service (such as a sequential monthly term without having to wait for the initial term to expire before requesting another monthly term) so that the total time period for which the reservation applies is greater than one month, subject to the requirements of Section 18.3.

14.2 Reservation Priority

Non-Firm Point-To-Point Transmission Service shall be available from transfer capability in excess of that needed for reliable service to Native Load Customers, Network Customers and other Transmission Customers taking Long-Term and Short-Term Firm Point-To-Point Transmission Service. A higher priority will be assigned first to requests or reservations with a longer duration of service and second to Pre-Confirmed Applications. In the event the Transmission System is constrained, competing requests of the same Pre-Confirmation status and equal duration will be prioritized based on the highest price offered by the Eligible Customer for the Transmission Service. Eligible Customers that have already reserved shorter term service have the right of first refusal to match any longer term request before being preempted. A longer term competing request for Non-Firm Point-To-Point Transmission Service will be granted if the Eligible Customer with the right of first refusal does not agree to match the competing request: (a) Immediately for hourly Non-Firm Point-To-Point Transmission Service after notification by the Transmission Provider; and, (b) within 24 hours (or earlier if necessary to comply with the scheduling deadlines provided in section 14.6) for Non-Firm Point-To-Point Transmission Service other than hourly transactions after notification by the Transmission Provider. Transmission service for Network Customers from resources other than designated Network Resources will have a higher priority than any Non-Firm Point-To-Point Transmission Service. Non-Firm Point-To-Point Transmission Service over secondary Point(s) of Receipt and Point(s) of Delivery will have the lowest reservation priority under the Tariff.

14.3 Use of Non-Firm Point-To-Point Transmission Service by the Transmission Provider

The Transmission Provider will be subject to the rates, terms and conditions of Part II of the Tariff when making Third-Party Sales under (i) agreements executed on or after September 8, 2008 or (ii) agreements executed prior to the aforementioned date that the Commission requires to be unbundled, by the date specified by the Commission. The Transmission Provider will maintain separate accounting, pursuant to Section 8, for any use of Non-Firm Point-To-Point Transmission Service to make Third-Party Sales.

14.4 Service Agreements

The Transmission Provider shall offer a standard form Non-Firm Point-To-Point Transmission Service Agreement (Attachment B) to an Eligible Customer when it first submits a Completed Application for Non-Firm Point-To-Point Transmission Service pursuant to the Tariff. Executed Service Agreements that contain the information required under the Tariff shall be filed with the Commission in compliance with applicable Commission regulations.

14.5 Classification of Non-Firm Point-To-Point Transmission Service

Non-Firm Point-To-Point Transmission Service shall be offered under terms and conditions contained in Part II of the Tariff. The Transmission Provider undertakes no obligation under the Tariff to plan its Transmission System in order to have sufficient capacity for Non-Firm Point-To-Point Transmission Service. Parties requesting Non-Firm Point-To-Point Transmission Service for the transmission of firm power do so with the full realization that such service is subject to availability and to Curtailment or Interruption under the terms of the Tariff. The Transmission Provider shall specify the rate treatment and all related terms and conditions applicable in the event that a Transmission Customer (including Third-Party Sales by the Transmission Provider) exceeds its non-firm capacity reservation. Non-Firm Point-To-Point Transmission Service shall include transmission of energy on an hourly basis and transmission of scheduled short-term capacity and energy on a daily, weekly or monthly basis, but not to exceed one month's reservation for any one Application, under Schedule 8.

14.6 Scheduling of Non-Firm Point-To-Point Transmission Service

Schedules for Non-Firm Point-To-Point Transmission Service must be submitted to the Transmission Provider no later than *2 p.m.* [or a reasonable time that is generally accepted in the region and is consistently adhered to by the Transmission Provider] of the day prior to commencement of such service. Schedules submitted after 2 p.m. will be accommodated, if practicable. Hour-to-hour schedules of energy that is to be delivered must be stated in increments of 1,000 kW per hour [or a reasonable increment that is generally accepted in the region and is consistently adhered to by the Transmission Provider]. Transmission Customers within the Transmission Provider's service area with multiple requests for Transmission Service at a Point of Receipt, each of which is under 1,000 kW per hour, may consolidate their schedules at a common Point of Receipt into units of 1,000 kW per hour. Scheduling changes will be permitted up to twenty (20) minutes [or a reasonable time that is generally accepted in the region and is consistently adhered to by the Transmission Provider] before the start of the next clock hour provided that the Delivering Party and Receiving Party also agree to the schedule modification. The Transmission Provider will furnish to the Delivering Party's system operator, hour-to-hour schedules equal to those furnished by the Receiving Party (unless reduced for losses) and shall deliver the capacity and energy provided by such schedules. Should the Transmission Customer, Delivering

Party or Receiving Party revise or terminate any schedule, such party shall immediately notify the Transmission Provider, and the Transmission Provider shall have the right to adjust accordingly the schedule for capacity and energy to be received and to be delivered.

14.7 Curtailment or Interruption of Service

The Transmission Provider reserves the right to Curtail, in whole or in part, Non-Firm Point-To-Point Transmission Service provided under the Tariff for reliability reasons when an emergency or other unforeseen condition threatens to impair or degrade the reliability of its Transmission System or the systems directly and indirectly interconnected with Transmission Provider's Transmission System. Transmission Provider may elect to implement such Curtailments pursuant to the Transmission Loading Relief procedures specified in Attachment J. The Transmission Provider reserves the right to Interrupt, in whole or in part, Non-Firm Point-To-Point Transmission Service provided under the Tariff for economic reasons in order to accommodate (1) a request for Firm Transmission Service, (2) a request for Non-Firm Point-To-Point Transmission Service of greater duration, (3) a request for Non-Firm Point-To-Point Transmission Service of equal duration with a higher price, (4) transmission service for Network Customers from non-designated resources, or (5) transmission service for Firm Point-to-Point Transmission Service during conditional curtailment periods as described in Section 15.4. The Transmission Provider also will discontinue or reduce service to the Transmission Customer to the extent that deliveries for transmission are discontinued or reduced at the Point(s) of Receipt. Where required, Curtailments or Interruptions will be made on a non-discriminatory basis to the transaction(s) that effectively relieve the constraint, however, Non-Firm Point-To-Point Transmission Service shall be subordinate to Firm Transmission Service. If multiple transactions require Curtailment or Interruption, to the extent practicable and consistent with Good Utility Practice, Curtailments or Interruptions will be made to transactions of the shortest term (*e.g.*, hourly non-firm transactions will be Curtailed or Interrupted before daily non-firm transactions and daily non-firm transactions will be Curtailed or Interrupted before weekly non-firm transactions). Transmission service for Network Customers from resources other than designated Network Resources will have a higher priority than any Non-Firm Point-To-Point Transmission Service under the Tariff. Non-Firm Point-To-Point Transmission Service over secondary Point(s) of Receipt and Point(s) of Delivery will have a lower priority than any Non-Firm Point-To-Point Transmission Service under the Tariff. The Transmission Provider will provide advance notice of Curtailment or Interruption where such notice can be provided consistent with Good Utility Practice.

15 Service Availability

15.1 General Conditions

The Transmission Provider will provide Firm and Non-Firm Point-To-Point Transmission Service over, on or across its Transmission System to any Transmission Customer that has met the requirements of Section 16.

15.2 Determination of Available Transfer Capability

A description of the Transmission Provider's specific methodology for assessing available transfer capability posted on the Transmission Provider's OASIS (Section 4) is contained in Attachment C of the Tariff. In the event sufficient transfer capability may not exist to accommodate a service request, the Transmission Provider will respond by performing a System Impact Study.

15.3 Initiating Service in the Absence of an Executed Service Agreement

If the Transmission Provider and the Transmission Customer requesting Firm or Non-Firm Point-To-Point Transmission Service cannot agree on all the terms and conditions of the Point-To-Point Service Agreement, the Transmission Provider shall file with the Commission, within thirty (30) days after the date the Transmission Customer provides written notification directing the Transmission Provider to file, an unexecuted Point-To-Point Service Agreement containing terms and conditions deemed appropriate by the Transmission Provider for such requested Transmission Service. The Transmission Provider shall commence providing Transmission Service subject to the Transmission Customer agreeing to (i) compensate the Transmission Provider at whatever rate the Commission ultimately determines to be just and reasonable, and (ii) comply with the terms and conditions of the Tariff including posting appropriate security deposits in accordance with the terms of Section 17.3.

15.4 Obligation To Provide Transmission Service That Requires Expansion or Modification of the Transmission System, Redispatch or Conditional Curtailment

(a) If the Transmission Provider determines that it cannot accommodate a Completed Application for Firm Point-To-Point Transmission Service because of insufficient capability on its Transmission System, the Transmission Provider will use due diligence to expand or modify its Transmission System to provide the requested Firm Transmission Service, consistent with its planning obligations in Attachment K, provided the Transmission Customer agrees to compensate the Transmission Provider for such costs pursuant to the terms of Section 27. The Transmission Provider will conform to Good Utility Practice and its planning obligations in Attachment K, in determining the need for new facilities and in the design and construction of such facilities. The obligation applies only to those facilities that the Transmission Provider has the right to expand or modify.

(b) If the Transmission Provider determines that it cannot accommodate a Completed Application for Long-Term Firm Point-To-Point Transmission Service because of insufficient capability on its Transmission System, the Transmission Provider will use due diligence to provide redispatch from its own resources until (i) Network Upgrades are completed for the Transmission Customer, (ii) the Transmission Provider determines through a biennial reassessment that it can no longer reliably provide the redispatch, or (iii) the Transmission Customer terminates the service because of redispatch changes resulting from the reassessment. A Transmission Provider shall not unreasonably deny self-provided redispatch or redispatch arranged by the Transmission Customer from a third party resource.

(c) If the Transmission Provider determines that it cannot accommodate a Completed Application for Long-Term Firm Point-To-Point Transmission Service because of insufficient capability on its Transmission System, the Transmission Provider will offer the Firm Transmission Service with the condition that the Transmission Provider may curtail the service prior to the curtailment of other Firm Transmission Service for a specified number of hours per year or during System Condition(s). If the Transmission Customer accepts the service, the Transmission Provider will use due diligence to provide the service until (i) Network Upgrades are

completed for the Transmission Customer, (ii) the Transmission Provider determines through a biennial reassessment that it can no longer reliably provide such service, or (iii) the Transmission Customer terminates the service because the reassessment increased the number of hours per year of conditional curtailment or changed the System Conditions.

15.5 Deferral of Service

The Transmission Provider may defer providing service until it completes construction of new transmission facilities or upgrades needed to provide Firm Point-To-Point Transmission Service whenever the Transmission Provider determines that providing the requested service would, without such new facilities or upgrades, impair or degrade reliability to any existing firm services.

15.6 Other Transmission Service Schedules

Eligible Customers receiving transmission service under other agreements on file with the Commission may continue to receive transmission service under those agreements until such time as those agreements may be modified by the Commission.

15.7 Real Power Losses

Real Power Losses are associated with all transmission service. The Transmission Provider is not obligated to provide Real Power Losses. The Transmission Customer is responsible for replacing losses associated with all transmission service as calculated by the Transmission Provider. The applicable Real Power Loss factors are as follows: [To be completed by the Transmission Provider].

16 Transmission Customer Responsibilities

16.1 Conditions Required of Transmission Customers

Point-To-Point Transmission Service shall be provided by the Transmission Provider only if the following conditions are satisfied by the Transmission Customer:

(a) The Transmission Customer has pending a Completed Application for service;

(b) The Transmission Customer meets the creditworthiness criteria set forth in Section 11;

(c) The Transmission Customer will have arrangements in place for any other transmission service necessary to effect the delivery from the generating source to the Transmission Provider prior to the time service under Part II of the Tariff commences;

(d) The Transmission Customer agrees to pay for any facilities constructed and chargeable to such Transmission Customer under Part II of the Tariff, whether or not the Transmission Customer takes service for the full term of its reservation;

(e) The Transmission Customer provides the information required by the Transmission Provider's planning process established in Attachment K; and

(f) The Transmission Customer has executed a Point-To-Point Service Agreement or has agreed to receive service pursuant to Section 15.3.

16.2 Transmission Customer Responsibility for Third-Party Arrangements

Any scheduling arrangements that may be required by other electric systems shall be the responsibility of the Transmission Customer requesting service. The Transmission Customer shall provide, unless waived by the Transmission Provider, notification to the Transmission Provider identifying such systems and authorizing them to schedule the capacity and energy to be transmitted by the Transmission Provider pursuant to Part II of the Tariff on behalf of the Receiving Party at the Point of Delivery or the Delivering Party at the Point of Receipt. However, the Transmission Provider will undertake reasonable efforts to assist the Transmission Customer in making such arrangements, including without limitation, providing any information or data required by such other electric system pursuant to Good Utility Practice.

17 Procedures for Arranging Firm Point-To-Point Transmission Service

17.1 Application

A request for Firm Point-To-Point Transmission Service for periods of one year or longer must contain a written Application to: [Transmission Provider Name and Address], at least sixty (60) days in advance of the calendar month in which service is to commence. The Transmission Provider will consider requests for such firm service on shorter notice when feasible. Requests for firm service for periods of less than one year shall be subject to expedited procedures that shall be negotiated between the Parties within the time constraints provided in Section 17.5. All Firm Point-To-Point Transmission Service requests should be submitted by entering the information listed below on the Transmission Provider's OASIS. Prior to implementation of the Transmission Provider's OASIS, a Completed Application may be submitted by (i) transmitting the required information to the Transmission Provider by telefax, or (ii) providing the information by telephone over the Transmission Provider's time recorded telephone line. Each of these methods will provide a time-stamped record for establishing the priority of the Application.

17.2 Completed Application

A Completed Application shall provide all of the information included in 18 CFR 2.20 including but not limited to the following:

(i) The identity, address, telephone number and facsimile number of the entity requesting service;

(ii) A statement that the entity requesting service is, or will be upon commencement of service, an Eligible Customer under the Tariff;

(iii) The location of the Point(s) of Receipt and Point(s) of Delivery and the identities of the Delivering Parties and the Receiving Parties;

(iv) The location of the generating facility(ies) supplying the capacity and energy and the location of the load ultimately served by the capacity and energy transmitted. The Transmission Provider will treat this information as confidential except to the extent that disclosure of this information is required by this Tariff, by regulatory or judicial order, for reliability purposes pursuant to Good Utility Practice or pursuant to RTG transmission information sharing agreements. The Transmission Provider shall treat this information consistent with the standards of conduct contained in Part 37 of the Commission's regulations;

(v) A description of the supply characteristics of the capacity and energy to be delivered;

(vi) An estimate of the capacity and energy expected to be delivered to the Receiving Party;

(vii) The Service Commencement Date and the term of the requested Transmission Service;

(viii) The transmission capacity requested for each Point of Receipt and each Point of Delivery on the Transmission Provider's Transmission System; customers may combine their requests for service in order to satisfy the minimum transmission capacity requirement;

(ix) A statement indicating that, if the Eligible Customer submits a Pre-Confirmed Application, the Eligible Customer will execute a Service Agreement upon receipt of notification that the Transmission Provider can provide the requested Transmission Service; and

(x) Any additional information required by the Transmission Provider's planning process established in Attachment K.

The Transmission Provider shall treat this information consistent with the standards of conduct contained in Part 37 of the Commission's regulations.

17.3 Deposit

A Completed Application for Firm Point-To-Point Transmission Service also shall include a deposit of either one month's charge for Reserved Capacity or the full charge for Reserved Capacity for service requests of less than one month. If the Application is rejected by the Transmission Provider because it does not meet the conditions for service as set forth herein, or in the case of requests for service arising in connection with losing bidders in a Request For Proposals (RFP), said deposit shall be returned with interest less any reasonable costs incurred by the Transmission Provider in connection with the review of the losing bidder's Application. The deposit also will be returned with interest less any reasonable costs incurred by the Transmission Provider if the Transmission Provider is unable to complete new facilities needed to provide the service. If an Application is withdrawn or the Eligible Customer decides not to enter into a Service Agreement for Firm Point-To-Point Transmission Service, the deposit shall be refunded in full, with interest, less reasonable costs incurred by the Transmission Provider to the extent such costs have not already been recovered by the Transmission Provider from the Eligible Customer. The Transmission Provider will provide to the Eligible Customer a complete accounting of all costs deducted from the refunded deposit, which the Eligible Customer may contest if there is a dispute concerning the deducted costs. Deposits associated with construction of new facilities are subject to the provisions of Section 19. If a Service Agreement for Firm Point-To-Point Transmission Service is executed, the deposit, with interest, will be returned to the Transmission Customer upon expiration or termination of the Service Agreement for Firm Point-To-Point Transmission Service. Applicable interest shall be computed in accordance with the Commission's regulations at 18 CFR 35.19a(a)(2)(iii), and shall be calculated from the day the deposit check is credited to the Transmission Provider's account.

17.4 Notice of Deficient Application

If an Application fails to meet the requirements of the Tariff, the Transmission Provider shall notify the entity requesting service within fifteen (15) days of receipt of the reasons for such failure. The Transmission Provider will attempt to remedy minor deficiencies in the Application through informal communications with the Eligible Customer. If such efforts are unsuccessful, the Transmission Provider shall return the Application, along with any deposit, with interest. Upon receipt of a new or revised Application that fully complies with the requirements of Part II of the Tariff, the Eligible Customer shall be assigned a new priority consistent with the date of the new or revised Application.

17.5 Response to a Completed Application

Following receipt of a Completed Application for Firm Point-To-Point Transmission Service, the Transmission Provider shall make a determination of available transfer capability as required in Section 15.2. The Transmission Provider shall notify the Eligible Customer as soon as practicable, but not later than thirty (30) days after the date of receipt of a Completed Application either (i) if it will be able to provide service without performing a System Impact Study or (ii) if such a study is needed to evaluate the impact of the Application pursuant to Section 19.1. Responses by the Transmission Provider must be made as soon as practicable to all completed applications (including applications by its own merchant function) and the timing of such responses must be made on a non-discriminatory basis.

17.6 Execution of Service Agreement

Whenever the Transmission Provider determines that a System Impact Study is not required and that the service can be provided, it shall notify the Eligible Customer as soon as practicable but no later than thirty (30) days after receipt of the Completed Application. Where a System Impact Study is required, the provisions of Section 19 will govern the execution of a Service Agreement. Failure of an Eligible Customer to execute and return the Service Agreement or request the filing of an unexecuted service agreement pursuant to Section 15.3, within fifteen (15) days after it is tendered by the Transmission Provider will be deemed a withdrawal and termination of the Application and any deposit submitted shall be refunded with interest. Nothing herein limits the right of an Eligible Customer to file another Application after such withdrawal and termination.

17.7 Extensions for Commencement of Service

The Transmission Customer can obtain, subject to availability, up to five (5) one-year extensions for the commencement of service. The Transmission Customer may postpone service by paying a non-refundable annual reservation fee equal to one-month's charge for Firm Transmission Service for each year or fraction thereof within 15 days of notifying the Transmission Provider it intends to extend the commencement of service. If during any extension for the commencement of service an Eligible Customer submits a Completed Application for Firm Transmission Service, and such request can be satisfied only by releasing all or part of the Transmission Customer's Reserved Capacity, the original Reserved Capacity will be released unless the following condition is satisfied. Within thirty (30) days, the original Transmission Customer agrees to pay the Firm Point-To-Point transmission rate for its Reserved Capacity concurrent with the new Service Commencement Date. In the event the Transmission Customer elects to release the Reserved Capacity, the reservation fees or portions thereof previously paid will be forfeited.

18 Procedures for Arranging Non-Firm Point-To-Point Transmission Service

18.1 Application

Eligible Customers seeking Non-Firm Point-To-Point Transmission Service must submit a Completed Application to the Transmission Provider. Applications should be submitted by entering the information listed below on the Transmission Provider's OASIS. Prior to implementation of the Transmission Provider's OASIS, a Completed Application may be submitted by (i) transmitting the required information to the Transmission Provider by telefax, or (ii) providing the information by telephone over the Transmission Provider's time recorded telephone line. Each of these methods will provide a time-stamped record for establishing the service priority of the Application.

18.2 Completed Application

A Completed Application shall provide all of the information included in 18 CFR 2.20 including but not limited to the following:

(i) The identity, address, telephone number and facsimile number of the entity requesting service;

(ii) A statement that the entity requesting service is, or will be upon commencement of service, an Eligible Customer under the Tariff;

(iii) The Point(s) of Receipt and the Point(s) of Delivery;

(iv) The maximum amount of capacity requested at each Point of Receipt and Point of Delivery; and

(v) The proposed dates and hours for initiating and terminating transmission service hereunder.

In addition to the information specified above, when required to properly evaluate system conditions, the Transmission Provider also may ask the Transmission Customer to provide the following:

(vi) The electrical location of the initial source of the power to be transmitted pursuant to the Transmission Customer's request for service; and

(vii) The electrical location of the ultimate load.

The Transmission Provider will treat this information in (vi) and (vii) as confidential at the request of the Transmission Customer except to the extent that disclosure of this information is required by this Tariff, by regulatory or judicial order, for reliability purposes pursuant to Good Utility Practice, or pursuant to RTG transmission information sharing agreements. The Transmission Provider shall treat this information consistent with the standards of conduct contained in Part 37 of the Commission's regulations.

(viii) A statement indicating that, if the Eligible Customer submits a Pre-Confirmed Application, the Eligible Customer will execute a Service Agreement upon receipt of notification that the Transmission Provider can provide the requested Transmission Service.

18.3 Reservation of Non-Firm Point-to-Point Transmission Service

Requests for monthly service shall be submitted no earlier than sixty (60) days before service is to commence; requests for weekly service shall be submitted no earlier than fourteen (14) days before service is to commence, requests for daily service shall be submitted no earlier than two (2) days before service is to commence, and requests for hourly service shall be submitted no earlier than noon the day before service is to commence. Requests for service received later than 2 p.m. prior to the day service is scheduled to commence will be accommodated if practicable [or such reasonable times that are generally accepted in the region and are consistently adhered to by the Transmission Provider].

18.4 Determination of Available Transfer Capability

Following receipt of a tendered schedule the Transmission Provider will make a determination on a non-discriminatory basis of available transfer capability pursuant to Section 15.2. Such determination shall be made as soon as reasonably practicable after receipt, but not later than the following time periods for the following terms of service (i) thirty (30) minutes for hourly service, (ii) thirty (30) minutes for daily service, (iii) four (4) hours for weekly service, and (iv) two (2) days for monthly service. [Or such reasonable times that are generally accepted in the region and are consistently adhered to by the Transmission Provider].

19 Additional Study Procedures for Firm Point-to-Point Transmission Service Requests

19.1 Notice of Need for System Impact Study

After receiving a request for service, the Transmission Provider shall determine on a non-discriminatory basis whether a System Impact Study is needed. A description of the Transmission Provider's methodology for completing a System Impact Study is provided in Attachment D. If the Transmission Provider determines that a System Impact Study is necessary to accommodate the requested service, it shall so inform the Eligible Customer, as soon as practicable. Once informed, the Eligible Customer shall timely notify the Transmission Provider if it elects to have the Transmission Provider study redispatch or conditional curtailment as part of the System Impact Study. If notification is provided prior to tender of the System Impact Study Agreement, the Eligible Customer can avoid the costs associated with the study of these options. The Transmission Provider shall within thirty (30) days of receipt of a Completed Application, tender a System Impact Study Agreement pursuant to which the Eligible Customer shall agree to reimburse the Transmission Provider for performing the required System Impact Study. For a service request to remain a Completed Application, the Eligible Customer shall execute the System Impact Study Agreement and return it to the Transmission Provider within fifteen (15) days. If the Eligible Customer elects not to execute the System Impact Study Agreement, its application shall be deemed withdrawn and its deposit, pursuant to Section 17.3, shall be returned with interest.

19.2 System Impact Study Agreement and Cost Reimbursement

(i) The System Impact Study Agreement will clearly specify the Transmission Provider's estimate of the actual cost, and time for completion of the System Impact Study. The charge shall not exceed the actual cost of the study. In performing the System Impact Study, the Transmission Provider shall rely, to the extent reasonably practicable, on existing transmission planning studies. The Eligible Customer will not be assessed a charge for such existing studies; however, the Eligible Customer will be responsible for charges associated with any modifications to existing planning studies that are reasonably necessary to evaluate the impact of the Eligible Customer's request for service on the Transmission System.

(ii) If in response to multiple Eligible Customers requesting service in relation to the same competitive solicitation, a single System Impact Study is sufficient for the Transmission Provider to accommodate the requests for service, the costs of that study shall be pro-rated among the Eligible Customers.

(iii) For System Impact Studies that the Transmission Provider conducts on its own behalf, the Transmission Provider shall record the cost of the System Impact Studies pursuant to Section 20.

19.3 System Impact Study Procedures

Upon receipt of an executed System Impact Study Agreement, the Transmission Provider will use due diligence to complete the required System Impact Study within a sixty (60) day period. The System Impact Study shall identify (1) any system constraints, identified with specificity by transmission element or flowgate, (2) redispatch options (when requested by an Eligible Customer) including an estimate of the cost of redispatch, (3) conditional curtailment options (when requested by an Eligible Customer) including the number of hours per year and the System Conditions during which conditional curtailment may occur, and (4) additional Direct Assignment Facilities or Network Upgrades required to provide the requested service. For customers requesting the study of redispatch options, the System Impact Study shall (1) identify all resources located within the Transmission Provider's Control Area that can significantly contribute toward relieving the system constraint and (2) provide a measurement of each

resource's impact on the system constraint. If the Transmission Provider possesses information indicating that any resource outside its Control Area could relieve the constraint, it shall identify each such resource in the System Impact Study. In the event that the Transmission Provider is unable to complete the required System Impact Study within such time period, it shall so notify the Eligible Customer and provide an estimated completion date along with an explanation of the reasons why additional time is required to complete the required studies. A copy of the completed System Impact Study and related work papers shall be made available to the Eligible Customer as soon as the System Impact Study is complete. The Transmission Provider will use the same due diligence in completing the System Impact Study for an Eligible Customer as it uses when completing studies for itself. The Transmission Provider shall notify the Eligible Customer immediately upon completion of the System Impact Study if the Transmission System will be adequate to accommodate all or part of a request for service or that no costs are likely to be incurred for new transmission facilities or upgrades. In order for a request to remain a Completed Application, within fifteen (15) days of completion of the System Impact Study the Eligible Customer must execute a Service Agreement or request the filing of an unexecuted Service Agreement pursuant to Section 15.3, or the Application shall be deemed terminated and withdrawn.

19.4 Facilities Study Procedures

If a System Impact Study indicates that additions or upgrades to the Transmission System are needed to supply the Eligible Customer's service request, the Transmission Provider, within thirty (30) days of the completion of the System Impact Study, shall tender to the Eligible Customer a Facilities Study Agreement pursuant to which the Eligible Customer shall agree to reimburse the Transmission Provider for performing the required Facilities Study. For a service request to remain a Completed Application, the Eligible Customer shall execute the Facilities Study Agreement and return it to the Transmission Provider within fifteen (15) days. If the Eligible Customer elects not to execute the Facilities Study Agreement, its application shall be deemed withdrawn and its deposit, pursuant to Section 17.3, shall be returned with interest. Upon receipt of an executed Facilities Study Agreement, the Transmission Provider will use due diligence to complete the required Facilities Study within a sixty (60) day period. If the Transmission Provider is unable to complete the Facilities Study in the allotted time period, the Transmission Provider shall notify the Transmission Customer and provide an estimate of the time needed to reach a final determination along with an explanation of the reasons that additional time is required to complete the study. When completed, the Facilities Study will include a good faith estimate of (i) the cost of Direct Assignment Facilities to be charged to the Transmission Customer, (ii) the Transmission Customer's appropriate share of the cost of any required Network Upgrades as determined pursuant to the provisions of Part II of the Tariff, and (iii) the time required to complete such construction and initiate the requested service. The Transmission Customer shall provide the Transmission Provider with a letter of credit or other reasonable form of security acceptable to the Transmission Provider equivalent to the costs of new facilities or upgrades consistent with commercial practices as established by the Uniform Commercial Code. The Transmission Customer shall have thirty (30) days to execute a Service Agreement or request the filing of an unexecuted Service Agreement and provide the required letter of credit or other form of security or the request will no longer be a Completed Application and shall be deemed terminated and withdrawn.

19.5 Facilities Study Modifications

Any change in design arising from inability to site or construct facilities as proposed will require development of a revised good faith estimate. New good faith estimates also will be required in the event of new statutory or regulatory requirements that are effective before the completion of construction or other circumstances beyond the control of the Transmission Provider that significantly affect the final cost of new facilities or upgrades to be charged to the Transmission Customer pursuant to the provisions of Part II of the Tariff.

19.6 Due Diligence in Completing New Facilities

The Transmission Provider shall use due diligence to add necessary facilities or upgrade its Transmission System within a reasonable time. The Transmission Provider will not upgrade its existing or planned Transmission System in order to provide the requested Firm Point-To-Point Transmission Service if doing so would impair system reliability or otherwise impair or degrade existing firm service.

19.7 Partial Interim Service

If the Transmission Provider determines that it will not have adequate transfer capability to satisfy the full amount of a Completed Application for Firm Point-To-Point Transmission Service, the Transmission Provider nonetheless shall be obligated to offer and provide the portion of the requested Firm Point-To-Point Transmission Service that can be accommodated without addition of any facilities and through redispatch. However, the Transmission Provider shall not be obligated to provide the incremental amount of requested Firm Point-To-Point Transmission Service that requires the addition of facilities or upgrades to the Transmission System until such facilities or upgrades have been placed in service.

19.8 Expedited Procedures for New Facilities

In lieu of the procedures set forth above, the Eligible Customer shall have the option to expedite the process by requesting the Transmission Provider to tender at one time, together with the results of required studies, an ''Expedited Service Agreement'' pursuant to which the Eligible Customer would agree to compensate the Transmission Provider for all costs incurred pursuant to the terms of the Tariff. In order to exercise this option, the Eligible Customer shall request in writing an expedited Service Agreement covering all of the above-specified items within thirty (30) days of receiving the results of the System Impact Study identifying needed facility additions or upgrades or costs incurred in providing the requested service. While the Transmission Provider agrees to provide the Eligible Customer with its best estimate of the new facility costs and other charges that may be incurred, such estimate shall not be binding and the Eligible Customer must agree in writing to compensate the Transmission Provider for all costs incurred pursuant to the provisions of the Tariff. The Eligible Customer shall execute and return such an Expedited Service Agreement within fifteen (15) days of its receipt or the Eligible Customer's request for service will cease to be a Completed Application and will be deemed terminated and withdrawn.

19.9 Penalties for Failure To Meet Study Deadlines

Sections 19.3 and 19.4 require a Transmission Provider to use due diligence to meet 60-day study completion deadlines for System Impact Studies and Facilities Studies.

(i) The Transmission Provider is required to file a notice with the Commission in the event that more than twenty (20) percent of non-Affiliates' System Impact Studies and Facilities Studies completed by the Transmission Provider in any two consecutive calendar quarters are not completed within the 60-day study completion deadlines. Such notice must be filed within thirty (30) days of the end of the calendar quarter triggering the notice requirement.

(ii) For the purposes of calculating the percent of non-Affiliates' System Impact Studies and Facilities Studies processed outside of the 60-day study completion deadlines, the Transmission Provider shall consider all System Impact Studies and Facilities Studies that it completes for non-Affiliates during the calendar quarter. The percentage should be calculated by dividing the number of those studies which are completed on time by the total number of completed studies. The Transmission Provider may provide an explanation in its notification filing to the Commission if it believes there are extenuating circumstances that prevented it from meeting the 60-day study completion deadlines.

(iii) The Transmission Provider is subject to an operational penalty if it completes ten (10) percent or more of non-Affiliates' System Impact Studies and Facilities Studies outside of the 60-day study completion deadlines for each of the two calendar quarters immediately following the quarter that triggered its notification filing to the Commission. The operational penalty will be assessed for each calendar quarter for which an operational penalty applies, starting with the calendar quarter immediately following the quarter that triggered the Transmission Provider's notification filing to the Commission. The operational penalty will continue to be assessed each quarter until the Transmission Provider completes at least ninety (90) percent of all non-Affiliates' System Impact Studies and Facilities Studies within the 60-day deadline.

(iv) For penalties assessed in accordance with subsection (iii) above, the penalty amount for each System Impact Study or Facilities Study shall be equal to $500 for each day the Transmission Provider takes to complete that study beyond the 60-day deadline.

20 Procedures if the Transmission Provider Is Unable To Complete New Transmission Facilities for Firm Point-to-Point Transmission Service

20.1 Delays in Construction of New Facilities

If any event occurs that will materially affect the time for completion of new facilities, or the ability to complete them, the Transmission Provider shall promptly notify the Transmission Customer. In such circumstances, the Transmission Provider shall within thirty (30) days of notifying the Transmission Customer of such delays, convene a technical meeting with the Transmission Customer to evaluate the alternatives available to the Transmission Customer. The Transmission Provider also shall make available to the Transmission Customer studies and work papers related to the delay, including all information that is in the possession of the Transmission Provider that is reasonably needed by the Transmission Customer to evaluate any alternatives.

20.2 Alternatives to the Original Facility Additions

When the review process of Section 20.1 determines that one or more alternatives exist to the originally planned construction project, the Transmission Provider shall present such alternatives for consideration by the Transmission Customer. If, upon review of any alternatives, the Transmission Customer desires to maintain its Completed Application subject to construction of the alternative facilities, it may request the Transmission Provider to submit a revised Service Agreement for Firm Point-To-Point Transmission Service. If the alternative approach solely involves Non-Firm Point-To-Point Transmission Service, the Transmission Provider shall promptly tender a Service Agreement for Non-Firm Point-To-Point Transmission Service providing for the service. In the event the Transmission Provider concludes that no reasonable alternative exists and the Transmission Customer disagrees, the Transmission Customer may seek relief under the dispute resolution procedures pursuant to Section 12 or it may refer the dispute to the Commission for resolution.

20.3 Refund Obligation for Unfinished Facility Additions

If the Transmission Provider and the Transmission Customer mutually agree that no other reasonable alternatives exist and the requested service cannot be provided out of existing capability under the conditions of Part II of the Tariff, the obligation to provide the requested Firm Point-To-Point Transmission Service shall terminate and any deposit made by the Transmission Customer shall be returned with interest pursuant to Commission regulations 35.19a(a)(2)(iii). However, the Transmission Customer shall be responsible for all prudently incurred costs by the Transmission Provider through the time construction was suspended.

21 Provisions Relating to Transmission Construction and Services on the Systems of Other Utilities

21.1 Responsibility for Third-Party System Additions

The Transmission Provider shall not be responsible for making arrangements for any necessary engineering, permitting, and construction of transmission or distribution facilities on the system(s) of any other entity or for obtaining any regulatory approval for such facilities. The Transmission Provider will undertake reasonable efforts to assist the Transmission Customer in obtaining such arrangements, including without limitation, providing any information or data required by such other electric system pursuant to Good Utility Practice.

21.2 Coordination of Third-Party System Additions

In circumstances where the need for transmission facilities or upgrades is identified pursuant to the provisions of Part II of the Tariff, and if such upgrades further require the addition of transmission facilities on other systems, the Transmission Provider shall have the right to coordinate construction on its own system with the construction required by others. The Transmission Provider, after consultation with the Transmission Customer and representatives of such other systems, may defer construction of its new transmission facilities, if the new transmission facilities on another system cannot be completed in a timely manner. The Transmission Provider shall notify the Transmission Customer in writing of the basis for any decision to defer construction and the specific problems which must be resolved before it will initiate or resume construction of new facilities. Within sixty (60) days of receiving written notification by the Transmission Provider of its intent to defer construction pursuant to this section, the Transmission Customer may challenge the decision in accordance with the dispute resolution procedures

pursuant to Section 12 or it may refer the dispute to the Commission for resolution.

22 Changes in Service Specifications

22.1 Modifications on a Non-Firm Basis

The Transmission Customer taking Firm Point-To-Point Transmission Service may request the Transmission Provider to provide transmission service on a non-firm basis over Receipt and Delivery Points other than those specified in the Service Agreement (''Secondary Receipt and Delivery Points''), in amounts not to exceed its firm capacity reservation, without incurring an additional Non-Firm Point-To-Point Transmission Service charge or executing a new Service Agreement, subject to the following conditions.

(a) Service provided over Secondary Receipt and Delivery Points will be non-firm only, on an as-available basis and will not displace any firm or non-firm service reserved or scheduled by third-parties under the Tariff or by the Transmission Provider on behalf of its Native Load Customers.

(b) The sum of all Firm and non-firm Point-To-Point Transmission Service provided to the Transmission Customer at any time pursuant to this section shall not exceed the Reserved Capacity in the relevant Service Agreement under which such services are provided.

(c) The Transmission Customer shall retain its right to schedule Firm Point-To-Point Transmission Service at the Receipt and Delivery Points specified in the relevant Service Agreement in the amount of its original capacity reservation.

(d) Service over Secondary Receipt and Delivery Points on a non-firm basis shall not require the filing of an Application for Non-Firm Point-To-Point Transmission Service under the Tariff. However, all other requirements of Part II of the Tariff (except as to transmission rates) shall apply to transmission service on a non-firm basis over Secondary Receipt and Delivery Points.

22.2 Modification on a Firm Basis

Any request by a Transmission Customer to modify Receipt and Delivery Points on a firm basis shall be treated as a new request for service in accordance with Section 17 hereof, except that such Transmission Customer shall not be obligated to pay any additional deposit if the capacity reservation does not exceed the amount reserved in the existing Service Agreement. While such new request is pending, the Transmission Customer shall retain its priority for service at the existing firm Receipt and Delivery Points specified in its Service Agreement.

23 Sale or Assignment of Transmission Service

23.1 Procedures for Assignment or Transfer of Service

Subject to Commission approval of any necessary filings, a Transmission Customer may sell, assign, or transfer all or a portion of its rights under its Service Agreement, but only to another Eligible Customer (the Assignee). The Transmission Customer that sells, assigns or transfers its rights under its Service Agreement is hereafter referred to as the Reseller. Compensation to Resellers shall not exceed the higher of (i) the original rate paid by the Reseller, (ii) the Transmission Provider's maximum rate on file at the time of the assignment, or (iii) the Reseller's opportunity cost capped at the Transmission Provider's cost of expansion; provided that, for service prior to October 1, 2010, compensation to Resellers shall be at rates established by agreement between the Reseller and the Assignee.

The Assignee must execute a service agreement with the Transmission Provider governing reassignments of transmission service prior to the date on which the reassigned service commences. The Transmission Provider shall charge the Reseller, as appropriate, at the rate stated in the Reseller's Service Agreement with the Transmission Provider or the associated OASIS schedule and credit the Reseller with the price reflected in the Assignee's Service Agreement with the Transmission Provider or the associated OASIS schedule; provided that, such credit shall be reversed in the event of non-payment by the Assignee. If the Assignee does not request any change in the Point(s) of Receipt or the Point(s) of Delivery, or a change in any other term or condition set forth in the original Service Agreement, the Assignee will receive the same services as did the Reseller and the priority of service for the Assignee will be the same as that of the Reseller. The Assignee will be subject to all terms and conditions of this Tariff. If the Assignee requests a change in service, the reservation priority of service will be determined by the Transmission Provider pursuant to Section 13.2.

23.2 Limitations on Assignment or Transfer of Service

If the Assignee requests a change in the Point(s) of Receipt or Point(s) of Delivery, or a change in any other specifications set forth in the original Service Agreement, the Transmission Provider will consent to such change subject to the provisions of the Tariff, provided that the change will not impair the operation and reliability of the Transmission Provider's generation, transmission, or distribution systems. The Assignee shall compensate the Transmission Provider for performing any System Impact Study needed to evaluate the capability of the Transmission System to accommodate the proposed change and any additional costs resulting from such change. The Reseller shall remain liable for the performance of all obligations under the Service Agreement, except as specifically agreed to by the Transmission Provider and the Reseller through an amendment to the Service Agreement.

23.3 Information on Assignment or Transfer of Service

In accordance with Section 4, all sales or assignments of capacity must be conducted through or otherwise posted on the Transmission Provider's OASIS on or before the date the reassigned service commences and are subject to Section 23.1. Resellers may also use the Transmission Provider's OASIS to post transmission capacity available for resale.

24 Metering and Power Factor Correction at Receipt and Delivery Points(s)

24.1 Transmission Customer Obligations

Unless otherwise agreed, the Transmission Customer shall be responsible for installing and maintaining compatible metering and communications equipment to accurately account for the capacity and energy being transmitted under Part II of the Tariff and to communicate the information to the Transmission Provider. Such equipment shall remain the property of the Transmission Customer.

24.2 Transmission Provider Access to Metering Data

The Transmission Provider shall have access to metering data, which may reasonably be required to facilitate measurements and billing under the Service Agreement.

24.3 Power Factor

Unless otherwise agreed, the Transmission Customer is required to maintain a power factor within the same range as the Transmission Provider pursuant to Good Utility Practices. The

power factor requirements are specified in the Service Agreement where applicable.

25 Compensation for Transmission Service

Rates for Firm and Non-Firm Point-To-Point Transmission Service are provided in the Schedules appended to the Tariff: Firm Point-To-Point Transmission Service (Schedule 7); and Non-Firm Point-To-Point Transmission Service (Schedule 8). The Transmission Provider shall use Part II of the Tariff to make its Third-Party Sales. The Transmission Provider shall account for such use at the applicable Tariff rates, pursuant to Section 8.

26 Stranded Cost Recovery

The Transmission Provider may seek to recover stranded costs from the Transmission Customer pursuant to this Tariff in accordance with the terms, conditions and procedures set forth in FERC Order No. 888. However, the Transmission Provider must separately file any specific proposed stranded cost charge under Section 205 of the Federal Power Act.

27 Compensation for New Facilities and Redispatch Costs

Whenever a System Impact Study performed by the Transmission Provider in connection with the provision of Firm Point-To-Point Transmission Service identifies the need for new facilities, the Transmission Customer shall be responsible for such costs to the extent consistent with Commission policy. Whenever a System Impact Study performed by the Transmission Provider identifies capacity constraints that may be relieved by redispatching the Transmission Provider's resources to eliminate such constraints, the Transmission Customer shall be responsible for the redispatch costs to the extent consistent with Commission policy.

III. Network Integration Transmission Service

Preamble

The Transmission Provider will provide Network Integration Transmission Service pursuant to the applicable terms and conditions contained in the Tariff and Service Agreement. Network Integration Transmission Service allows the Network Customer to integrate, economically dispatch and regulate its current and planned Network Resources to serve its Network Load in a manner comparable to that in which the Transmission Provider utilizes its Transmission System to serve its Native Load Customers. Network Integration Transmission Service also may be used by the Network Customer to deliver economy energy purchases to its Network Load from non-designated resources on an as-available basis without additional charge. Transmission service for sales to non-designated loads will be provided pursuant to the applicable terms and conditions of Part II of the Tariff.

28 Nature of Network Integration Transmission Service

28.1 Scope of Service

Network Integration Transmission Service is a transmission service that allows Network Customers to efficiently and economically utilize their Network Resources (as well as other non-designated generation resources) to serve their Network Load located in the Transmission Provider's Control Area and any additional load that may be designated pursuant to Section 31.3 of the Tariff. The Network Customer taking Network Integration Transmission Service must obtain or provide Ancillary Services pursuant to Section 3.

28.2 Transmission Provider Responsibilities

The Transmission Provider will plan, construct, operate and maintain its Transmission System in accordance with Good Utility Practice and its planning obligations in Attachment K in order to provide the Network Customer with Network Integration Transmission Service over the Transmission Provider's Transmission System. The Transmission Provider, on behalf of its Native Load Customers, shall be required to designate resources and loads in the same manner as any Network Customer under Part III of this Tariff. This information must be consistent with the information used by the Transmission Provider to calculate available transfer capability. The Transmission Provider shall include the Network Customer's Network Load in its Transmission System planning and shall, consistent with Good Utility Practice and Attachment K, endeavor to construct and place into service sufficient transfer capability to deliver the Network Customer's Network Resources to serve its Network Load on a basis comparable to the Transmission Provider's delivery of its own generating and purchased resources to its Native Load Customers.

28.3 Network Integration Transmission Service

The Transmission Provider will provide firm transmission service over its Transmission System to the Network Customer for the delivery of capacity and energy from its designated Network Resources to service its Network Loads on a basis that is comparable to the Transmission Provider's use of the Transmission System to reliably serve its Native Load Customers.

28.4 Secondary Service

The Network Customer may use the Transmission Provider's Transmission System to deliver energy to its Network Loads from resources that have not been designated as Network Resources. Such energy shall be transmitted, on an as-available basis, at no additional charge. Secondary service shall not require the filing of an Application for Network Integration Transmission Service under the Tariff. However, all other requirements of Part III of the Tariff (except for transmission rates) shall apply to secondary service. Deliveries from resources other than Network Resources will have a higher priority than any Non-Firm Point-To-Point Transmission Service under Part II of the Tariff.

28.5 Real Power Losses

Real Power Losses are associated with all transmission service. The Transmission Provider is not obligated to provide Real Power Losses. The Network Customer is responsible for replacing losses associated with all transmission service as calculated by the Transmission Provider. The applicable Real Power Loss factors are as follows: [To be completed by the Transmission Provider].

28.6 Restrictions on Use of Service

The Network Customer shall not use Network Integration Transmission Service for (i) sales of capacity and energy to non-designated loads, or (ii) direct or indirect provision of transmission service by the Network Customer to third parties. All Network Customers taking Network Integration Transmission Service shall use Point-To-Point Transmission Service under Part II of the Tariff for any Third-Party Sale which requires use of the Transmission Provider's Transmission System. The Transmission Provider shall specify any appropriate charges and penalties and all related terms and conditions applicable in the event that a Network Customer uses Network Integration Transmission Service or secondary service pursuant to Section

28.4 to facilitate a wholesale sale that does not serve a Network Load.

29 Initiating Service

29.1 Condition Precedent for Receiving Service

Subject to the terms and conditions of Part III of the Tariff, the Transmission Provider will provide Network Integration Transmission Service to any Eligible Customer, provided that (i) the Eligible Customer completes an Application for service as provided under Part III of the Tariff, (ii) the Eligible Customer and the Transmission Provider complete the technical arrangements set forth in Sections 29.3 and 29.4, (iii) the Eligible Customer executes a Service Agreement pursuant to Attachment F for service under Part III of the Tariff or requests in writing that the Transmission Provider file a proposed unexecuted Service Agreement with the Commission, and (iv) the Eligible Customer executes a Network Operating Agreement with the Transmission Provider pursuant to Attachment G, or requests in writing that the Transmission Provider file a proposed unexecuted Network Operating Agreement.

29.2 Application Procedures

An Eligible Customer requesting service under Part III of the Tariff must submit an Application, with a deposit approximating the charge for one month of service, to the Transmission Provider as far as possible in advance of the month in which service is to commence. Unless subject to the procedures in Section 2, Completed Applications for Network Integration Transmission Service will be assigned a priority according to the date and time the Application is received, with the earliest Application receiving the highest priority. Applications should be submitted by entering the information listed below on the Transmission Provider's OASIS. Prior to implementation of the Transmission Provider's OASIS, a Completed Application may be submitted by (i) transmitting the required information to the Transmission Provider by telefax, or (ii) providing the information by telephone over the Transmission Provider's time recorded telephone line. Each of these methods will provide a time-stamped record for establishing the service priority of the Application. A Completed Application shall provide all of the information included in 18 CFR 2.20 including but not limited to the following:

(i) The identity, address, telephone number and facsimile number of the party requesting service;

(ii) A statement that the party requesting service is, or will be upon commencement of service, an Eligible Customer under the Tariff;

(iii) A description of the Network Load at each delivery point. This description should separately identify and provide the Eligible Customer's best estimate of the total loads to be served at each transmission voltage level, and the loads to be served from each Transmission Provider substation at the same transmission voltage level. The description should include a ten (10) year forecast of summer and winter load and resource requirements beginning with the first year after the service is scheduled to commence;

(iv) The amount and location of any interruptible loads included in the Network Load. This shall include the summer and winter capacity requirements for each interruptible load (had such load not been interruptible), that portion of the load subject to interruption, the conditions under which an interruption can be implemented and any limitations on the amount and frequency of interruptions. An Eligible Customer should identify the amount of interruptible customer load (if any) included in the 10 year load forecast provided in response to (iii) above;

(v) A description of Network Resources (current and 10-year projection). For each on-system Network Resource, such description shall include:

- Unit size and amount of capacity from that unit to be designated as Network Resource
- VAR capability (both leading and lagging) of all generators
- Operating restrictions
  - —Any periods of restricted operations throughout the year
  - —Maintenance schedules
  - —Minimum loading level of unit
  - —Normal operating level of unit
  - —Any must-run unit designations required for system reliability or contract reasons
- Approximate variable generating cost ($/MWH) for redispatch computations
- Arrangements governing sale and delivery of power to third parties from generating facilities located in the Transmission Provider Control Area, where only a portion of unit output is designated as a Network Resource;

For each off-system Network Resource, such description shall include:

- Identification of the Network Resource as an off-system resource
- Amount of power to which the customer has rights
- Identification of the control area from which the power will originate
- Delivery point(s) to the Transmission Provider's Transmission System
- Transmission arrangements on the external transmission system(s)
- Operating restrictions, if any
  - —Any periods of restricted operations throughout the year
  - —Maintenance schedules
  - —Minimum loading level of unit
  - —Normal operating level of unit
  - —Any must-run unit designations required for system reliability or contract reasons
- Approximate variable generating cost ($/MWH) for redispatch computations;

(vi) Description of Eligible Customer's transmission system:

- Load flow and stability data, such as real and reactive parts of the load, lines, transformers, reactive devices and load type, including normal and emergency ratings of all transmission equipment in a load flow format compatible with that used by the Transmission Provider
- Operating restrictions needed for reliability
- Operating guides employed by system operators
- Contractual restrictions or committed uses of the Eligible Customer's transmission system, other than the Eligible Customer's Network Loads and Resources
- Location of Network Resources described in subsection (v) above
- 10 year projection of system expansions or upgrades
- Transmission System maps that include any proposed expansions or upgrades
- Thermal ratings of Eligible Customer's Control Area ties with other Control Areas;

(vii) Service Commencement Date and the term of the requested Network Integration Transmission Service. The minimum term for Network Integration Transmission Service is one year;

(viii) A statement signed by an authorized officer from or agent of the Network Customer attesting that all of the network resources listed pursuant to Section 29.2(v) satisfy the following conditions: (1) The Network Customer owns the resource, has committed to purchase generation pursuant to an executed contract, or has committed to purchase generation where execution of a contract is contingent upon the

availability of transmission service under Part III of the Tariff; and (2) the Network Resources do not include any resources, or any portion thereof, that are committed for sale to non-designated third party load or otherwise cannot be called upon to meet the Network Customer's Network Load on a non-interruptible basis, except for purposes of fulfilling obligations under a reserve sharing program; and

(ix) Any additional information required of the Transmission Customer as specified in the Transmission Provider's planning process established in Attachment K.

Unless the Parties agree to a different time frame, the Transmission Provider must acknowledge the request within ten (10) days of receipt. The acknowledgement must include a date by which a response, including a Service Agreement, will be sent to the Eligible Customer. If an Application fails to meet the requirements of this section, the Transmission Provider shall notify the Eligible Customer requesting service within fifteen (15) days of receipt and specify the reasons for such failure. Wherever possible, the Transmission Provider will attempt to remedy deficiencies in the Application through informal communications with the Eligible Customer. If such efforts are unsuccessful, the Transmission Provider shall return the Application without prejudice to the Eligible Customer filing a new or revised Application that fully complies with the requirements of this section. The Eligible Customer will be assigned a new priority consistent with the date of the new or revised Application. The Transmission Provider shall treat this information consistent with the standards of conduct contained in Part 37 of the Commission's regulations.

29.3 Technical Arrangements to be Completed Prior to Commencement of Service

Network Integration Transmission Service shall not commence until the Transmission Provider and the Network Customer, or a third party, have completed installation of all equipment specified under the Network Operating Agreement consistent with Good Utility Practice and any additional requirements reasonably and consistently imposed to ensure the reliable operation of the Transmission System. The Transmission Provider shall exercise reasonable efforts, in coordination with the Network Customer, to complete such arrangements as soon as practicable taking into consideration the Service Commencement Date.

29.4 Network Customer Facilities

The provision of Network Integration Transmission Service shall be conditioned upon the Network Customer's constructing, maintaining and operating the facilities on its side of each delivery point or interconnection necessary to reliably deliver capacity and energy from the Transmission Provider's Transmission System to the Network Customer. The Network Customer shall be solely responsible for constructing or installing all facilities on the Network Customer's side of each such delivery point or interconnection.

29.5 Filing of Service Agreement

The Transmission Provider will file Service Agreements with the Commission in compliance with applicable Commission regulations.

30 Network Resources

30.1 Designation of Network Resources

Network Resources shall include all generation owned, purchased or leased by the Network Customer designated to serve Network Load under the Tariff. Network Resources may not include resources, or any portion thereof, that are committed for sale to non-designated third party load or otherwise cannot be called upon to meet the Network Customer's Network Load on a non-interruptible basis, except for purposes of fulfilling obligations under a reserve sharing program. Any owned or purchased resources that were serving the Network Customer's loads under firm agreements entered into on or before the Service Commencement Date shall initially be designated as Network Resources until the Network Customer terminates the designation of such resources.

30.2 Designation of New Network Resources

The Network Customer may designate a new Network Resource by providing the Transmission Provider with as much advance notice as practicable. A designation of a new Network Resource must be made through the Transmission Provider's OASIS by a request for modification of service pursuant to an Application under Section 29. This request must include a statement that the new network resource satisfies the following conditions: (1) The Network Customer owns the resource, has committed to purchase generation pursuant to an executed contract, or has committed to purchase generation where execution of a contract is contingent upon the availability of transmission service under Part III of the Tariff; and (2) The Network Resources do not include any resources, or any portion thereof, that are committed for sale to non-designated third party load or otherwise cannot be called upon to meet the Network Customer's Network Load on a non-interruptible basis, except for purposes of fulfilling obligations under a reserve sharing program. The Network Customer's request will be deemed deficient if it does not include this statement and the Transmission Provider will follow the procedures for a deficient application as described in Section 29.2 of the Tariff.

30.3 Termination of Network Resources

The Network Customer may terminate the designation of all or part of a generating resource as a Network Resource by providing notification to the Transmission Provider through OASIS as soon as reasonably practicable, but not later than the firm scheduling deadline for the period of termination. Any request for termination of Network Resource status must be submitted on OASIS, and should indicate whether the request is for indefinite or temporary termination. A request for indefinite termination of Network Resource status must indicate the date and time that the termination is to be effective, and the identification and capacity of the resource(s) or portions thereof to be indefinitely terminated. A request for temporary termination of Network Resource status must include the following:

(i) Effective date and time of temporary termination;

(ii) Effective date and time of redesignation, following period of temporary termination;

(iii) Identification and capacity of resource(s) or portions thereof to be temporarily terminated;

(iv) Resource description and attestation for redesignating the network resource following the temporary termination, in accordance with Section 30.2; and

(v) Identification of any related transmission service requests to be evaluated concomitantly with the request for temporary termination, such that the requests for undesignation and the request for these related transmission service requests must be approved or denied as a single request. The evaluation of these related transmission service requests must take into account the termination of the network resources identified in (iii) above, as well as all competing transmission service requests of higher priority.

As part of a temporary termination, a Network Customer may only redesignate

the same resource that was originally designated, or a portion thereof. Requests to redesignate a different resource and/or a resource with increased capacity will be deemed deficient and the Transmission Provider will follow the procedures for a deficient application as described in Section 29.2 of the Tariff.

30.4 Operation of Network Resources

The Network Customer shall not operate its designated Network Resources located in the Network Customer's or Transmission Provider's Control Area such that the output of those facilities exceeds its designated Network Load, plus Non-Firm Sales delivered pursuant to Part II of the Tariff, plus losses, plus power sales under a reserve sharing program, plus sales that permit curtailment without penalty to serve its designated Network Load. This limitation shall not apply to changes in the operation of a Transmission Customer's Network Resources at the request of the Transmission Provider to respond to an emergency or other unforeseen condition which may impair or degrade the reliability of the Transmission System. For all Network Resources not physically connected with the Transmission Provider's Transmission System, the Network Customer may not schedule delivery of energy in excess of the Network Resource's capacity, as specified in the Network Customer's Application pursuant to Section 29, unless the Network Customer supports such delivery within the Transmission Provider's Transmission System by either obtaining Point-to-Point Transmission Service or utilizing secondary service pursuant to Section 28.4. The Transmission Provider shall specify the rate treatment and all related terms and conditions applicable in the event that a Network Customer's schedule at the delivery point for a Network Resource not physically interconnected with the Transmission Provider's Transmission System exceeds the Network Resource's designated capacity, excluding energy delivered using secondary service or Point-to-Point Transmission Service.

30.5 Network Customer Redispatch Obligation

As a condition to receiving Network Integration Transmission Service, the Network Customer agrees to redispatch its Network Resources as requested by the Transmission Provider pursuant to Section 33.2. To the extent practical, the redispatch of resources pursuant to this section shall be on a least cost, non-discriminatory basis between all Network Customers, and the Transmission Provider.

30.6 Transmission Arrangements for Network Resources Not Physically Interconnected With the Transmission Provider

The Network Customer shall be responsible for any arrangements necessary to deliver capacity and energy from a Network Resource not physically interconnected with the Transmission Provider's Transmission System. The Transmission Provider will undertake reasonable efforts to assist the Network Customer in obtaining such arrangements, including without limitation, providing any information or data required by such other entity pursuant to Good Utility Practice.

30.7 Limitation on Designation of Network Resources

The Network Customer must demonstrate that it owns or has committed to purchase generation pursuant to an executed contract in order to designate a generating resource as a Network Resource. Alternatively, the Network Customer may establish that execution of a contract is contingent upon the availability of transmission service under Part III of the Tariff.

30.8 Use of Interface Capacity by the Network Customer

There is no limitation upon a Network Customer's use of the Transmission Provider's Transmission System at any particular interface to integrate the Network Customer's Network Resources (or substitute economy purchases) with its Network Loads. However, a Network Customer's use of the Transmission Provider's total interface capacity with other transmission systems may not exceed the Network Customer's Load.

30.9 Network Customer Owned Transmission Facilities

The Network Customer that owns existing transmission facilities that are integrated with the Transmission Provider's Transmission System may be eligible to receive consideration either through a billing credit or some other mechanism. In order to receive such consideration the Network Customer must demonstrate that its transmission facilities are integrated into the plans or operations of the Transmission Provider, to serve its power and transmission customers. For facilities added by the Network Customer subsequent to [the effective date of a Final Rule in RM05–25–000], the Network Customer shall receive credit for such transmission facilities added if such facilities are integrated into the operations of the Transmission Provider's facilities; provided however, the Network Customer's transmission facilities shall be presumed to be integrated if such transmission facilities, if owned by the Transmission Provider, would be eligible for inclusion in the Transmission Provider's annual transmission revenue requirement as specified in Attachment H. Calculation of any credit under this subsection shall be addressed in either the Network Customer's Service Agreement or any other agreement between the Parties.

31 Designation of Network Load

31.1 Network Load

The Network Customer must designate the individual Network Loads on whose behalf the Transmission Provider will provide Network Integration Transmission Service. The Network Loads shall be specified in the Service Agreement.

31.2 New Network Loads Connected With the Transmission Provider

The Network Customer shall provide the Transmission Provider with as much advance notice as reasonably practicable of the designation of new Network Load that will be added to its Transmission System. A designation of new Network Load must be made through a modification of service pursuant to a new Application. The Transmission Provider will use due diligence to install any transmission facilities required to interconnect a new Network Load designated by the Network Customer. The costs of new facilities required to interconnect a new Network Load shall be determined in accordance with the procedures provided in Section 32.4 and shall be charged to the Network Customer in accordance with Commission policies.

31.3 Network Load Not Physically Interconnected With the Transmission Provider

This section applies to both initial designation pursuant to Section 31.1 and the subsequent addition of new Network Load not physically interconnected with the Transmission Provider. To the extent that the Network Customer desires to obtain transmission service for a load outside the Transmission Provider's Transmission System, the Network Customer shall have the option of (1) electing to include the entire load as Network Load for all purposes under Part III of the Tariff and designating Network Resources in connection with such additional Network Load, or (2) excluding that

entire load from its Network Load and purchasing Point-To-Point Transmission Service under Part II of the Tariff. To the extent that the Network Customer gives notice of its intent to add a new Network Load as part of its Network Load pursuant to this section the request must be made through a modification of service pursuant to a new Application.

31.4 New Interconnection Points

To the extent the Network Customer desires to add a new Delivery Point or interconnection point between the Transmission Provider's Transmission System and a Network Load, the Network Customer shall provide the Transmission Provider with as much advance notice as reasonably practicable.

31.5 Changes in Service Requests

Under no circumstances shall the Network Customer's decision to cancel or delay a requested change in Network Integration Transmission Service (*e.g.* the addition of a new Network Resource or designation of a new Network Load) in any way relieve the Network Customer of its obligation to pay the costs of transmission facilities constructed by the Transmission Provider and charged to the Network Customer as reflected in the Service Agreement. However, the Transmission Provider must treat any requested change in Network Integration Transmission Service in a non-discriminatory manner.

31.6 Annual Load and Resource Information Updates

The Network Customer shall provide the Transmission Provider with annual updates of Network Load and Network Resource forecasts consistent with those included in its Application for Network Integration Transmission Service under Part III of the Tariff including, but not limited to, any information provided under section 29.2(ix) pursuant to the Transmission Provider's planning process in Attachment K. The Network Customer also shall provide the Transmission Provider with timely written notice of material changes in any other information provided in its Application relating to the Network Customer's Network Load, Network Resources, its transmission system or other aspects of its facilities or operations affecting the Transmission Provider's ability to provide reliable service.

32 Additional Study Procedures for Network Integration Transmission Service Requests

32.1 Notice of Need for System Impact Study

After receiving a request for service, the Transmission Provider shall determine on a non-discriminatory basis whether a System Impact Study is needed. A description of the Transmission Provider's methodology for completing a System Impact Study is provided in Attachment D. If the Transmission Provider determines that a System Impact Study is necessary to accommodate the requested service, it shall so inform the Eligible Customer, as soon as practicable. In such cases, the Transmission Provider shall, within thirty (30) days of receipt of a Completed Application, tender a System Impact Study Agreement pursuant to which the Eligible Customer shall agree to reimburse the Transmission Provider for performing the required System Impact Study. For a service request to remain a Completed Application, the Eligible Customer shall execute the System Impact Study Agreement and return it to the Transmission Provider within fifteen (15) days. If the Eligible Customer elects not to execute the System Impact Study Agreement, its Application shall be deemed withdrawn and its deposit shall be returned with interest.

32.2 System Impact Study Agreement and Cost Reimbursement

(i) The System Impact Study Agreement will clearly specify the Transmission Provider's estimate of the actual cost, and time for completion of the System Impact Study. The charge shall not exceed the actual cost of the study. In performing the System Impact Study, the Transmission Provider shall rely, to the extent reasonably practicable, on existing transmission planning studies. The Eligible Customer will not be assessed a charge for such existing studies; however, the Eligible Customer will be responsible for charges associated with any modifications to existing planning studies that are reasonably necessary to evaluate the impact of the Eligible Customer's request for service on the Transmission System.

(ii) If in response to multiple Eligible Customers requesting service in relation to the same competitive solicitation, a single System Impact Study is sufficient for the Transmission Provider to accommodate the service requests, the costs of that study shall be pro-rated among the Eligible Customers.

(iii) For System Impact Studies that the Transmission Provider conducts on its own behalf, the Transmission Provider shall record the cost of the System Impact Studies pursuant to Section 8.

32.3 System Impact Study Procedures

Upon receipt of an executed System Impact Study Agreement, the Transmission Provider will use due diligence to complete the required System Impact Study within a sixty (60) day period. The System Impact Study shall identify (1) any system constraints, identified with specificity by transmission element or flowgate, (2) redispatch options (when requested by an Eligible Customer) including, to the extent possible, an estimate of the cost of redispatch, (3) available options for installation of automatic devices to curtail service (when requested by an Eligible Customer), and (4) additional Direct Assignment Facilities or Network Upgrades required to provide the requested service. For customers requesting the study of redispatch options, the System Impact Study shall (1) identify all resources located within the Transmission Provider's Control Area that can significantly contribute toward relieving the system constraint and (2) provide a measurement of each resource's impact on the system constraint. If the Transmission Provider possesses information indicating that any resource outside its Control Area could relieve the constraint, it shall identify each such resource in the System Impact Study. In the event that the Transmission Provider is unable to complete the required System Impact Study within such time period, it shall so notify the Eligible Customer and provide an estimated completion date along with an explanation of the reasons why additional time is required to complete the required studies. A copy of the completed System Impact Study and related work papers shall be made available to the Eligible Customer as soon as the System Impact Study is complete. The Transmission Provider will use the same due diligence in completing the System Impact Study for an Eligible Customer as it uses when completing studies for itself. The Transmission Provider shall notify the Eligible Customer immediately upon completion of the System Impact Study if the Transmission System will be adequate to accommodate all or part of a request for service or that no costs are likely to be incurred for new transmission facilities or upgrades. In order for a request to remain a Completed Application, within fifteen (15) days of completion of the System

Impact Study the Eligible Customer must execute a Service Agreement or request the filing of an unexecuted Service Agreement, or the Application shall be deemed terminated and withdrawn.

32.4 Facilities Study Procedures

If a System Impact Study indicates that additions or upgrades to the Transmission System are needed to supply the Eligible Customer's service request, the Transmission Provider, within thirty (30) days of the completion of the System Impact Study, shall tender to the Eligible Customer a Facilities Study Agreement pursuant to which the Eligible Customer shall agree to reimburse the Transmission Provider for performing the required Facilities Study. For a service request to remain a Completed Application, the Eligible Customer shall execute the Facilities Study Agreement and return it to the Transmission Provider within fifteen (15) days. If the Eligible Customer elects not to execute the Facilities Study Agreement, its Application shall be deemed withdrawn and its deposit shall be returned with interest. Upon receipt of an executed Facilities Study Agreement, the Transmission Provider will use due diligence to complete the required Facilities Study within a sixty (60) day period. If the Transmission Provider is unable to complete the Facilities Study in the allotted time period, the Transmission Provider shall notify the Eligible Customer and provide an estimate of the time needed to reach a final determination along with an explanation of the reasons that additional time is required to complete the study. When completed, the Facilities Study will include a good faith estimate of (i) the cost of Direct Assignment Facilities to be charged to the Eligible Customer, (ii) the Eligible Customer's appropriate share of the cost of any required Network Upgrades, and (iii) the time required to complete such construction and initiate the requested service. The Eligible Customer shall provide the Transmission Provider with a letter of credit or other reasonable form of security acceptable to the Transmission Provider equivalent to the costs of new facilities or upgrades consistent with commercial practices as established by the Uniform Commercial Code. The Eligible Customer shall have thirty (30) days to execute a Service Agreement or request the filing of an unexecuted Service Agreement and provide the required letter of credit or other form of security or the request no longer will be a Completed Application and shall be deemed terminated and withdrawn.

32.5 Penalties for Failure To Meet Study Deadlines

Section 19.9 defines penalties that apply for failure to meet the 60-day study completion due diligence deadlines for System Impact Studies and Facilities Studies under Part II of the Tariff. These same requirements and penalties apply to service under Part III of the Tariff.

33 Load Shedding and Curtailments

33.1 Procedures

Prior to the Service Commencement Date, the Transmission Provider and the Network Customer shall establish Load Shedding and Curtailment procedures pursuant to the Network Operating Agreement with the objective of responding to contingencies on the Transmission System and on systems directly and indirectly interconnected with Transmission Provider's Transmission System. The Parties will implement such programs during any period when the Transmission Provider determines that a system contingency exists and such procedures are necessary to alleviate such contingency. The Transmission Provider will notify all affected Network Customers in a timely manner of any scheduled Curtailment.

33.2 Transmission Constraints

During any period when the Transmission Provider determines that a transmission constraint exists on the Transmission System, and such constraint may impair the reliability of the Transmission Provider's system, the Transmission Provider will take whatever actions, consistent with Good Utility Practice, that are reasonably necessary to maintain the reliability of the Transmission Provider's system. To the extent the Transmission Provider determines that the reliability of the Transmission System can be maintained by redispatching resources, the Transmission Provider will initiate procedures pursuant to the Network Operating Agreement to redispatch all Network Resources and the Transmission Provider's own resources on a least-cost basis without regard to the ownership of such resources. Any redispatch under this section may not unduly discriminate between the Transmission Provider's use of the Transmission System on behalf of its Native Load Customers and any Network Customer's use of the Transmission System to serve its designated Network Load.

33.3 Cost Responsibility for Relieving Transmission Constraints

Whenever the Transmission Provider implements least-cost redispatch procedures in response to a transmission constraint, the Transmission Provider and Network Customers will each bear a proportionate share of the total redispatch cost based on their respective Load Ratio Shares.

33.4 Curtailments of Scheduled Deliveries

If a transmission constraint on the Transmission Provider's Transmission System cannot be relieved through the implementation of least-cost redispatch procedures and the Transmission Provider determines that it is necessary to Curtail scheduled deliveries, the Parties shall Curtail such schedules in accordance with the Network Operating Agreement or pursuant to the Transmission Loading Relief procedures specified in Attachment J.

33.5 Allocation of Curtailments

The Transmission Provider shall, on a non-discriminatory basis, Curtail the transaction(s) that effectively relieve the constraint. However, to the extent practicable and consistent with Good Utility Practice, any Curtailment will be shared by the Transmission Provider and Network Customer in proportion to their respective Load Ratio Shares. The Transmission Provider shall not direct the Network Customer to Curtail schedules to an extent greater than the Transmission Provider would Curtail the Transmission Provider's schedules under similar circumstances.

33.6 Load Shedding

To the extent that a system contingency exists on the Transmission Provider's Transmission System and the Transmission Provider determines that it is necessary for the Transmission Provider and the Network Customer to shed load, the Parties shall shed load in accordance with previously established procedures under the Network Operating Agreement.

33.7 System Reliability

Notwithstanding any other provisions of this Tariff, the Transmission Provider reserves the right, consistent with Good Utility Practice and on a not unduly discriminatory basis, to Curtail Network Integration Transmission Service without liability on the Transmission Provider's part for the purpose of making necessary adjustments to, changes in, or repairs on its lines, substations and facilities, and in cases where the continuance of Network

Integration Transmission Service would endanger persons or property. In the event of any adverse condition(s) or disturbance(s) on the Transmission Provider's Transmission System or on any other system(s) directly or indirectly interconnected with the Transmission Provider's Transmission System, the Transmission Provider, consistent with Good Utility Practice, also may Curtail Network Integration Transmission Service in order to (i) limit the extent or damage of the adverse condition(s) or disturbance(s), (ii) prevent damage to generating or transmission facilities, or (iii) expedite restoration of service. The Transmission Provider will give the Network Customer as much advance notice as is practicable in the event of such Curtailment. Any Curtailment of Network Integration Transmission Service will be not unduly discriminatory relative to the Transmission Provider's use of the Transmission System on behalf of its Native Load Customers. The Transmission Provider shall specify the rate treatment and all related terms and conditions applicable in the event that the Network Customer fails to respond to established Load Shedding and Curtailment procedures.

34 Rates and Charges

The Network Customer shall pay the Transmission Provider for any Direct Assignment Facilities, Ancillary Services, and applicable study costs, consistent with Commission policy, along with the following:

34.1 Monthly Demand Charge

The Network Customer shall pay a monthly Demand Charge, which shall be determined by multiplying its Load Ratio Share times one twelfth (1/12) of the Transmission Provider's Annual Transmission Revenue Requirement specified in Schedule H.

34.2 Determination of Network Customer's Monthly Network Load

The Network Customer's monthly Network Load is its hourly load (including its designated Network Load not physically interconnected with the Transmission Provider under Section 31.3) coincident with the Transmission Provider's Monthly Transmission System Peak.

34.3 Determination of Transmission Provider's Monthly Transmission System Load

The Transmission Provider's monthly Transmission System load is the Transmission Provider's Monthly Transmission System Peak minus the coincident peak usage of all Firm Point-To-Point Transmission Service customers pursuant to Part II of this Tariff plus the Reserved Capacity of all Firm Point-To-Point Transmission Service customers.

34.4 Redispatch Charge

The Network Customer shall pay a Load Ratio Share of any redispatch costs allocated between the Network Customer and the Transmission Provider pursuant to Section 33. To the extent that the Transmission Provider incurs an obligation to the Network Customer for redispatch costs in accordance with Section 33, such amounts shall be credited against the Network Customer's bill for the applicable month.

34.5 Stranded Cost Recovery

The Transmission Provider may seek to recover stranded costs from the Network Customer pursuant to this Tariff in accordance with the terms, conditions and procedures set forth in FERC Order No. 888. However, the Transmission Provider must separately file any proposal to recover stranded costs under Section 205 of the Federal Power Act.

35 Operating Arrangements

35.1 Operation under the Network Operating Agreement

The Network Customer shall plan, construct, operate and maintain its facilities in accordance with Good Utility Practice and in conformance with the Network Operating Agreement.

35.2 Network Operating Agreement

The terms and conditions under which the Network Customer shall operate its facilities and the technical and operational matters associated with the implementation of Part III of the Tariff shall be specified in the Network Operating Agreement. The Network Operating Agreement shall provide for the Parties to (i) operate and maintain equipment necessary for integrating the Network Customer within the Transmission Provider's Transmission System (including, but not limited to, remote terminal units, metering, communications equipment and relaying equipment), (ii) transfer data between the Transmission Provider and the Network Customer (including, but not limited to, heat rates and operational characteristics of Network Resources, generation schedules for units outside the Transmission Provider's Transmission System, interchange schedules, unit outputs for redispatch required under Section 33, voltage schedules, loss factors and other real time data), (iii) use software programs required for data links and constraint dispatching, (iv) exchange data on forecasted loads and resources necessary for long-term planning, and (v) address any other technical and operational considerations required for implementation of Part III of the Tariff, including scheduling protocols. The Network Operating Agreement will recognize that the Network Customer shall either (i) operate as a Control Area under applicable guidelines of the Electric Reliability Organization (ERO) as defined in 18 CFR 39.1, (ii) satisfy its Control Area requirements, including all necessary Ancillary Services, by contracting with the Transmission Provider, or (iii) satisfy its Control Area requirements, including all necessary Ancillary Services, by contracting with another entity, consistent with Good Utility Practice, which satisfies the applicable reliability guidelines of the ERO. The Transmission Provider shall not unreasonably refuse to accept contractual arrangements with another entity for Ancillary Services. The Network Operating Agreement is included in Attachment G.

35.3 Network Operating Committee

A Network Operating Committee (Committee) shall be established to coordinate operating criteria for the Parties' respective responsibilities under the Network Operating Agreement. Each Network Customer shall be entitled to have at least one representative on the Committee. The Committee shall meet from time to time as need requires, but no less than once each calendar year.

Schedule 1—Scheduling, System Control and Dispatch Service

This service is required to schedule the movement of power through, out of, within, or into a Control Area. This service can be provided only by the operator of the Control Area in which the transmission facilities used for transmission service are located. Scheduling, System Control and Dispatch Service is to be provided directly by the Transmission Provider (if the Transmission Provider is the Control Area operator) or indirectly by the Transmission Provider making arrangements with the Control Area operator that performs this service for the Transmission Provider's Transmission System. The Transmission Customer must purchase this service from the Transmission Provider or the Control Area operator. The charges for Scheduling, System Control and Dispatch Service are to be based on the rates set forth below. To the extent the Control Area operator performs this

service for the Transmission Provider, charges to the Transmission Customer are to reflect only a pass-through of the costs charged to the Transmission Provider by that Control Area operator.

Schedule 2—Reactive Supply and Voltage Control From Generation or Other Sources Service

In order to maintain transmission voltages on the Transmission Provider's transmission facilities within acceptable limits, generation facilities and non-generation resources capable of providing this service that are under the control of the control area operator are operated to produce (or absorb) reactive power. Thus, Reactive Supply and Voltage Control from Generation or Other Sources Service must be provided for each transaction on the Transmission Provider's transmission facilities. The amount of Reactive Supply and Voltage Control from Generation or Other Sources Service that must be supplied with respect to the Transmission Customer's transaction will be determined based on the reactive power support necessary to maintain transmission voltages within limits that are generally accepted in the region and consistently adhered to by the Transmission Provider.

Reactive Supply and Voltage Control from Generation or Other Sources Service is to be provided directly by the Transmission Provider (if the Transmission Provider is the Control Area operator) or indirectly by the Transmission Provider making arrangements with the Control Area operator that performs this service for the Transmission Provider's Transmission System. The Transmission Customer must purchase this service from the Transmission Provider or the Control Area operator. The charges for such service will be based on the rates set forth below. To the extent the Control Area operator performs this service for the Transmission Provider, charges to the Transmission Customer are to reflect only a pass-through of the costs charged to the Transmission Provider by the Control Area operator.

Schedule 3—Regulation and Frequency Response Service

Regulation and Frequency Response Service is necessary to provide for the continuous balancing of resources (generation and interchange) with load and for maintaining scheduled Interconnection frequency at sixty cycles per second (60 Hz). Regulation and Frequency Response Service is accomplished by committing on-line generation whose output is raised or lowered (predominantly through the use of automatic generating control equipment) and by other non-generation resources capable of providing this service as necessary to follow the moment-by-moment changes in load. The obligation to maintain this balance between resources and load lies with the Transmission Provider (or the Control Area operator that performs this function for the Transmission Provider). The Transmission Provider must offer this service when the transmission service is used to serve load within its Control Area. The Transmission Customer must either purchase this service from the Transmission Provider or make alternative comparable arrangements to satisfy its Regulation and Frequency Response Service obligation. The amount of and charges for Regulation and Frequency Response Service are set forth below. To the extent the Control Area operator performs this service for the Transmission Provider, charges to the Transmission Customer are to reflect only a pass-through of the costs charged to the Transmission Provider by that Control Area operator.

Schedule 4—Energy Imbalance Service

Energy Imbalance Service is provided when a difference occurs between the scheduled and the actual delivery of energy to a load located within a Control Area over a single hour. The Transmission Provider must offer this service when the transmission service is used to serve load within its Control Area. The Transmission Customer must either purchase this service from the Transmission Provider or make alternative comparable arrangements, which may include use of non-generation resources capable of providing this service, to satisfy its Energy Imbalance Service obligation. To the extent the Control Area operator performs this service for the Transmission Provider, charges to the Transmission Customer are to reflect only a pass-through of the costs charged to the Transmission Provider by that Control Area operator. The Transmission Provider may charge a Transmission Customer a penalty for either hourly energy imbalances under this Schedule or a penalty for hourly generator imbalances under Schedule 9 for imbalances occurring during the same hour, but not both unless the imbalances aggravate rather than offset each other.

The Transmission Provider shall establish charges for energy imbalance based on the deviation bands as follows: (i) Deviations within +/−1.5 percent (with a minimum of 2 MW) of the scheduled transaction to be applied hourly to any energy imbalance that occurs as a result of the Transmission Customer's scheduled transaction(s) will be netted on a monthly basis and settled financially, at the end of the month, at 100 percent of incremental or decremental cost; (ii) deviations greater than +/−1.5 percent up to 7.5 percent (or greater than 2 MW up to 10 MW) of the scheduled transaction to be applied hourly to any energy imbalance that occurs as a result of the Transmission Customer's scheduled transaction(s) will be settled financially, at the end of each month, at 110 percent of incremental cost or 90 percent of decremental cost, and (iii) deviations greater than +/−7.5 percent (or 10 MW) of the scheduled transaction to be applied hourly to any energy imbalance that occurs as a result of the Transmission Customer's scheduled transaction(s) will be settled financially, at the end of each month, at 125 percent of incremental cost or 75 percent of decremental cost.

For purposes of this Schedule, incremental cost and decremental cost represent the Transmission Provider's actual average hourly cost of the last 10 MW dispatched for any purpose, *e.g.*, to supply the Transmission Provider's Native Load Customers, correct imbalances, or make off-system sales, based on the replacement cost of fuel, unit heat rates, start-up costs (including any commitment and redispatch costs), incremental operation and maintenance costs, and purchased and interchange power costs and taxes, as applicable.

Schedule 5—Operating Reserve—Spinning Reserve Service

Spinning Reserve Service is needed to serve load immediately in the event of a system contingency. Spinning Reserve Service may be provided by generating units that are on-line and loaded at less than maximum output and by non-generation resources capable of providing this service. The Transmission Provider must offer this service when the transmission service is used to serve load within its Control Area. The Transmission Customer must either purchase this service from the Transmission Provider or make alternative comparable arrangements to satisfy its Spinning Reserve Service obligation. The amount of and charges for Spinning Reserve Service are set forth below. To the extent the Control Area operator performs this service for the Transmission Provider, charges to the Transmission Customer are to reflect only a pass-through of the costs charged to the Transmission Provider by that Control Area operator.

Schedule 6—Operating Reserve—Supplemental Reserve Service

Supplemental Reserve Service is needed to serve load in the event of a system contingency; however, it is not available immediately to serve load but rather within a short period of time. Supplemental Reserve Service may be provided by generating units that are on-line but unloaded, by quick-start generation or by interruptible load or other non-generation resources capable of providing this service. The Transmission Provider must offer this service when the transmission service is used to serve load within its Control Area. The Transmission Customer must either purchase this service from the Transmission Provider or make alternative comparable arrangements to satisfy its Supplemental Reserve Service obligation. The amount of and charges for Supplemental Reserve Service are set forth below. To the extent the Control Area operator performs this service for the Transmission Provider, charges to the Transmission Customer are to reflect only a pass-through of the costs charged to the Transmission Provider by that Control Area operator.

Schedule 7—Long-Term Firm and Short-Term Firm Point-to-Point Transmission Service

The Transmission Customer shall compensate the Transmission Provider each month for Reserved Capacity at the sum of the applicable charges set forth below:

(1) *Yearly delivery:* one-twelfth of the demand charge of $_____/KW of Reserved Capacity per year.

(2) *Monthly delivery:* $_____/KW of Reserved Capacity per month.

(3) *Weekly delivery:* $_____/KW of Reserved Capacity per week.

(4) *Daily delivery:* $_____/KW of Reserved Capacity per day.

The total demand charge in any week, pursuant to a reservation for Daily delivery, shall not exceed the rate specified in section (3) above times the highest amount in kilowatts of Reserved Capacity in any day during such week.

(5) *Discounts:* Three principal requirements apply to discounts for transmission service as follows (1) Any offer of a discount made by the Transmission Provider must be announced to all Eligible Customers solely by posting on the OASIS, (2) any customer-initiated requests for discounts (including requests for use by one's wholesale merchant or an Affiliate's use) must occur solely by posting on the OASIS, and (3) once a discount is negotiated, details must be immediately posted on the OASIS. For any discount agreed upon for service on a path, from point(s) of receipt to point(s) of delivery, the Transmission Provider must offer the same discounted transmission service rate for the same time period to all Eligible Customers on all unconstrained transmission paths that go to the same point(s) of delivery on the Transmission System.

(6) *Resales:* The rates and rules governing charges and discounts stated above shall not apply to resales of transmission service, compensation for which shall be governed by section 23.1 of the Tariff.

Schedule 8—Non-Firm Point-to-Point Transmission Service

The Transmission Customer shall compensate the Transmission Provider for Non-Firm Point-To-Point Transmission Service up to the sum of the applicable charges set forth below:

(1) *Monthly delivery:* $_____/KW of Reserved Capacity per month.

(2) *Weekly delivery:* $_____/KW of Reserved Capacity per week.

(3) *Daily delivery:* $_____/KW of Reserved Capacity per day.

The total demand charge in any week, pursuant to a reservation for Daily delivery, shall not exceed the rate specified in section (2) above times the highest amount in kilowatts of Reserved Capacity in any day during such week.

(4) *Hourly delivery:* The basic charge shall be that agreed upon by the Parties at the time this service is reserved and in no event shall exceed $_____/MWH. The total demand charge in any day, pursuant to a reservation for Hourly delivery, shall not exceed the rate specified in section (3) above times the highest amount in kilowatts of Reserved Capacity in any hour during such day. In addition, the total demand charge in any week, pursuant to a reservation for Hourly or Daily delivery, shall not exceed the rate specified in section (2) above times the highest amount in kilowatts of Reserved Capacity in any hour during such week.

(5) *Discounts:* Three principal requirements apply to discounts for transmission service as follows (1) Any offer of a discount made by the Transmission Provider must be announced to all Eligible Customers solely by posting on the OASIS, (2) any customer-initiated requests for discounts (including requests for use by one's wholesale merchant or an Affiliate's use) must occur solely by posting on the OASIS, and (3) once a discount is negotiated, details must be immediately posted on the OASIS. For any discount agreed upon for service on a path, from point(s) of receipt to point(s) of delivery, the Transmission Provider must offer the same discounted transmission service rate for the same time period to all Eligible Customers on all unconstrained transmission paths that go to the same point(s) of delivery on the Transmission System.

(6) *Resales:* The rates and rules governing charges and discounts stated above shall not apply to resales of transmission service, compensation for which shall be governed by section 23.1 of the Tariff.

Schedule 9—Generator Imbalance Service

Generator Imbalance Service is provided when a difference occurs between the output of a generator located in the Transmission Provider's Control Area and a delivery schedule from that generator to (1) another Control Area or (2) a load within the Transmission Provider's Control Area over a single hour. The Transmission Provider must offer this service, to the extent it is physically feasible to do so from its resources or from resources available to it, when Transmission Service is used to deliver energy from a generator located within its Control Area. The Transmission Customer must either purchase this service from the Transmission Provider or make alternative comparable arrangements, which may include use of non-generation resources capable of providing this service, to satisfy its Generator Imbalance Service obligation. To the extent the Control Area operator performs this service for the Transmission Provider, charges to the Transmission Customer are to reflect only a pass-through of the costs charged to the Transmission Provider by that Control Area Operator. The Transmission Provider may charge a Transmission Customer a penalty for either hourly generator imbalances under this Schedule or a penalty for hourly energy imbalances under Schedule 4 for imbalances occurring during the same hour, but not both unless the imbalances aggravate rather than offset each other.

The Transmission Provider shall establish charges for generator imbalance based on the deviation bands as follows: (i) Deviations within +/−1.5 percent (with a minimum of 2 MW) of the scheduled transaction to be applied hourly to any generator imbalance that occurs as a result of the Transmission Customer's scheduled transaction(s) will be netted on a monthly basis and settled financially, at the end of each month, at 100 percent of incremental or decremental cost, (ii) deviations greater than +/−1.5 percent up to 7.5 percent (or greater than 2 MW up to 10 MW) of

the scheduled transaction to be applied hourly to any generator imbalance that occurs as a result of the Transmission Customer's scheduled transaction(s) will be settled financially, at the end of each month, at 110 percent of incremental cost or 90 percent of decremental cost, and (iii) deviations greater than +/−7.5 percent (or 10 MW) of the scheduled transaction to be applied hourly to any generator imbalance that occurs as a result of the Transmission Customer's scheduled transaction(s) will be settled at 125 percent of incremental cost or 75 percent of decremental cost, except that an intermittent resource will be exempt from this deviation band and will pay the deviation band charges for all deviations greater than the larger of 1.5 percent or 2 MW. An intermittent resource, for the limited purpose of this Schedule is an electric generator that is not dispatchable and cannot store its fuel source and therefore cannot respond to changes in system demand or respond to transmission security constraints.

Notwithstanding the foregoing, deviations from scheduled transactions in order to respond to directives by the Transmission Provider, a balancing authority, or a reliability coordinator shall not be subject to the deviation bands identified above and, instead, shall be settled financially, at the end of the month, at 100 percent of incremental and decremental cost. Such directives may include instructions to correct frequency decay, respond to a reserve sharing event, or change output to relieve congestion.

For purposes of this Schedule, incremental cost and decremental cost represent the Transmission Provider's actual average hourly cost of the last 10 MW dispatched for any purpose, *e.g.,* to supply the Transmission Provider's Native Load Customers, correct imbalances, or make off-system sales, based on the replacement cost of fuel, unit heat rates, start-up costs (including any commitment and redispatch costs), incremental operation and maintenance costs, and purchased and interchange power costs and taxes, as applicable.

Attachment A—Form of Service Agreement for Firm Point-To-Point Transmission Service

1.0 This Service Agreement, dated as of _____, is entered into, by and between _____ (the Transmission Provider), and _____ (''Transmission Customer'').

2.0 The Transmission Customer has been determined by the Transmission Provider to have a Completed Application for Firm Point-To-Point Transmission Service under the Tariff.

3.0 The Transmission Customer has provided to the Transmission Provider an Application deposit in accordance with the provisions of Section 17.3 of the Tariff.

4.0 Service under this agreement shall commence on the later of (l) the requested service commencement date, or (2) the date on which construction of any Direct Assignment Facilities and/or Network Upgrades are completed, or (3) such other date as it is permitted to become effective by the Commission. Service under this agreement shall terminate on such date as mutually agreed upon by the parties.

5.0 The Transmission Provider agrees to provide and the Transmission Customer agrees to take and pay for Firm Point-To-Point Transmission Service in accordance with the provisions of Part II of the Tariff and this Service Agreement.

6.0 Any notice or request made to or by either Party regarding this Service Agreement shall be made to the representative of the other Party as indicated below.

Transmission Provider:

_____

_____

_____

Transmission Customer:

_____

_____

_____

7.0 The Tariff is incorporated herein and made a part hereof.

In witness whereof, the Parties have caused this Service Agreement to be executed by their respective authorized officials.

Transmission Provider:

By: _____

Name _____

Title _____

Date _____

Transmission Customer:

By: _____

Name _____

Title _____

Date _____

Specifications for Long-Term Firm Point-To-Point Transmission Service

1.0 Term of Transaction: _____

Start Date: _____

Termination Date: _____

2.0 Description of capacity and energy to be transmitted by Transmission Provider including the electric Control Area in which the transaction originates.

_____

3.0 Point(s) of Receipt: _____

Delivering Party: _____

4.0 Point(s) of Delivery: _____

Receiving Party: _____

5.0 Maximum amount of capacity and energy to be transmitted (Reserved Capacity): _____

6.0 Designation of party(ies) subject to reciprocal service obligation:

_____

_____

_____

7.0 Name(s) of any Intervening Systems providing transmission service:

_____

_____

8.0 Service under this Agreement may be subject to some combination of the charges detailed below. (The appropriate charges for individual transactions will be determined in accordance with the terms and conditions of the Tariff.)

8.1 Transmission Charge: _____

8.2 System Impact and/or Facilities Study Charge(s): _____

_____

_____

8.3 Direct Assignment Facilities Charge: _____

_____

8.4 Ancillary Services Charges: _____

_____

_____

_____

_____

_____

Attachment A–1—Form of Service Agreement for the Resale, Reassignment or Transfer of Point-To-Point Transmission Service

1.0 This Service Agreement, dated as of _____, is entered into, by and between _____ (the Transmission Provider), and _____ (the Assignee).

2.0 The Assignee has been determined by the Transmission Provider to be an Eligible Customer under the Tariff pursuant to which the transmission service rights to be transferred were originally obtained.

3.0 The terms and conditions for the transaction entered into under this Service Agreement shall be subject to the terms and conditions of Part II of the Transmission Provider's Tariff, except for those terms and conditions negotiated by the Reseller of the reassigned transmission capacity (pursuant to Section 23.1 of this Tariff) and the Assignee, to include: contract effective and termination dates, the amount of reassigned capacity or energy, point(s) of receipt and delivery.

Changes by the Assignee to the Reseller's Points of Receipt and Points of Delivery will be subject to the provisions of Section 23.2 of this Tariff.
4.0 The Transmission Provider shall credit the Reseller for the price reflected in the Assignee's Service Agreement or the associated OASIS schedule.
5.0 Any notice or request made to or by either Party regarding this Service Agreement shall be made to the representative of the other Party as indicated below.

Transmission Provider:

_____
_____
_____

Assignee:

_____
_____
_____

6.0 The Tariff is incorporated herein and made a part hereof.
In witness whereof, the Parties have caused this Service Agreement to be executed by their respective authorized officials.

Transmission Provider:

By: _____
Name

_____
Title

_____
Date

Assignee:

By: _____
Name

_____
Title

_____
Date

Specifications For The Resale, Reassignment Or Transfer of Long-Term Firm Point-To-Point Transmission Service

1.0 Term of Transaction: _____
Start Date: _____
Termination Date: _____

2.0 Description of capacity and energy to be transmitted by Transmission Provider including the electric Control Area in which the transaction originates.

_____

3.0 Point(s) of Receipt: _____
Delivering Party: _____
4.0 Point(s) of Delivery: _____
Receiving Party: _____

5.0 Maximum amount of reassigned capacity: _____

6.0 Designation of party(ies) subject to reciprocal service obligation:

_____
_____

7.0 Name(s) of any Intervening Systems providing transmission service:

_____

8.0 Service under this Agreement may be subject to some combination of the charges detailed below. (The appropriate charges for individual transactions will be determined in accordance with the terms and conditions of the Tariff.)
8.1 Transmission Charge: _____

_____

8.2 System Impact and/or Facilities Study Charge(s):

_____

8.3 Direct Assignment Facilities Charge:

_____

8.4 Ancillary Services Charges: _____

_____
_____
_____
_____
_____

9.0 Name of Reseller of the reassigned transmission capacity:

_____

Attachment B—Form of Service Agreement for Non-Firm Point-To-Point Transmission Service

1.0 This Service Agreement, dated as of ____, is entered into, by and between ____ (the Transmission Provider), and ____ (Transmission Customer).
2.0 The Transmission Customer has been determined by the Transmission Provider to be a Transmission Customer under Part II of the Tariff and has filed a Completed Application for Non-Firm Point-To-Point Transmission Service in accordance with Section 18.2 of the Tariff.
3.0 Service under this Agreement shall be provided by the Transmission Provider upon request by an authorized representative of the Transmission Customer.
4.0 The Transmission Customer agrees to supply information the Transmission Provider deems reasonably necessary in accordance with Good Utility Practice in order for it to provide the requested service.
5.0 The Transmission Provider agrees to provide and the Transmission Customer agrees to take and pay for Non-Firm Point-To-Point Transmission Service in accordance with the provisions of Part II of the Tariff and this Service Agreement.
6.0 Any notice or request made to or by either Party regarding this Service Agreement shall be made to the representative of the other Party as indicated below.

Transmission Provider:

_____
_____
_____

Transmission Customer:

_____
_____
_____

7.0 The Tariff is incorporated herein and made a part hereof.
In witness whereof, the Parties have caused this Service Agreement to be executed by their respective authorized officials.

Transmission Provider:

By: _____
Name

_____
Title

_____
Date

Transmission Customer:

By: _____
Name

_____
Title

_____
Date

Attachment C—Methodology To Assess Available Transfer Capability

The Transmission Provider must include, at a minimum, the following information concerning its ATC calculation methodology:

(1) A detailed description of the specific mathematical algorithm used to calculate firm and non-firm ATC (and AFC, if applicable) for its scheduling horizon (same day and real-time), operating horizon (day ahead and pre-schedule) and planning horizon (beyond the operating horizon);

(2) A process flow diagram that illustrates the various steps through which ATC/AFC is calculated; and

(3) A detailed explanation of how each of the ATC components is calculated for both the operating and planning horizons.

(a) For TTC, a Transmission Provider shall: (i) Explain its definition of TTC; (ii) explain its TTC calculation methodology; (iii) list the databases used in its TTC assessments; and (iv) explain the assumptions used in its TTC assessments regarding load levels, generation dispatch, and modeling of planned and contingency outages.

(b) For ETC, a Transmission Provider shall explain: (i) Its definition of ETC;

(ii) the calculation methodology used to determine the transmission capacity to be set aside for native load (including network load), and non-OATT customers (including, if applicable, an explanation of assumptions on the selection of generators that are modeled in service); (iii) how point-to-point transmission service requests are incorporated; (iv) how rollover rights are accounted for; (v) its processes for ensuring that non-firm capacity is released properly (*e.g.*, when real-time schedules replace the associated transmission service requests in its real-time calculations); and (vi) describe the step-by-step modeling study methodology and criteria for adding or eliminating flowgates (permanent and temporary).

(c) If a Transmission Provider uses an AFC methodology to calculate ATC, it shall: (i) Explain its definition of AFC; (ii) explain its AFC calculation methodology; (iii) explain its process for converting AFC into ATC for OASIS posting; (iv) list the databases used in its AFC assessments; and (v) explain the assumptions used in its AFC assessments regarding load levels, generation dispatch, and modeling of planned and contingency outages.

(d) For TRM, a Transmission Provider shall explain: (i) Its definition of TRM; (ii) its TRM calculation methodology (*e.g.*, its assumptions on load forecast errors, forecast errors in system topology or distribution factors and loop flow sources); (iii) the databases used in its TRM assessments; (iv) the conditions under which the Transmission Provider uses TRM. A Transmission Provider that does not set aside transfer capability for TRM must so state.

(e) For CBM, the Transmission Provider shall state a specific and self-contained narrative explanation of its CBM practice, including: (i) An identification of the entity who performs the resource adequacy analysis for CBM determination; (ii) the methodology used to perform generation reliability assessments (*e.g.*, probabilistic or deterministic); (iii) an explanation of whether the assessment method reflects a specific regional practice; (iv) the assumptions used in this assessment; and (v) the basis for the selection of paths on which CBM is set aside.

(f) In addition, for CBM, a Transmission Provider shall: (i) Explain its definition of CBM; (ii) list the databases used in its CBM calculations; and (iii) demonstrate that there is no double-counting of contingency outages when performing CBM, TTC, and TRM calculations.

(g) The Transmission Provider shall explain its procedures for allowing the use of CBM during emergencies (with an explanation of what constitutes an emergency, the entities that are permitted to use CBM during emergencies and the procedures which must be followed by the transmission providers' merchant function and other load-serving entities when they need to access CBM). If the Transmission Provider's practice is not to set aside transfer capability for CBM, it shall so state.

Attachment D—Methodology for Completing a System Impact Study

To be filed by the Transmission Provider

Attachment E—Index of Point-To-Point Transmission Service Customers

_____

Customer

Date of Service Agreement _____

Attachment F—Service Agreement for Network Integration Transmission Service

To be filed by the Transmission Provider

Attachment G— Network Operating Agreement

To be filed by the Transmission Provider

Attachment H—Annual Transmission Revenue Requirement for Network Integration Transmission Service

1. The Annual Transmission Revenue Requirement for purposes of the Network Integration Transmission Service shall be _____

2. The amount in (1) shall be effective until amended by the Transmission Provider or modified by the Commission.

Attachment I—Index of Network Integration Transmission Service Customers

_____

Customer

Date of Service Agreement _____

Attachment J—Procedures for Addressing Parallel Flows

To be filed by the Transmission Provider

Attachment K—Transmission Planning Process

The Transmission Provider shall establish a coordinated, open and transparent planning process with its Network and Firm Point-to-Point Transmission Customers and other interested parties, including the coordination of such planning with interconnected systems within its region, to ensure that the Transmission System is planned to meet the needs of both the Transmission Provider and its Network and Firm Point-to-Point Transmission Customers on a comparable and nondiscriminatory basis. The Transmission Provider's coordinated, open and transparent planning process shall be provided as an attachment to the Transmission Provider's Tariff.

The Transmission Provider's planning process shall satisfy the following nine principles, as defined in the Final Rule in Docket No. RM05–25–000: Coordination, openness, transparency, information exchange, comparability, dispute resolution, regional participation, economic planning studies, and cost allocation for new projects. The planning process shall also provide a mechanism for the recovery and allocation of planning costs consistent with the Final Rule in Docket No. RM05–25–000.

The Transmission Provider's planning process must include sufficient detail to enable Transmission Customers to understand:

(i) The process for consulting with customers and neighboring transmission providers;

(ii) The notice procedures and anticipated frequency of meetings;

(iii) The methodology, criteria, and processes used to develop transmission plans;

(iv) The method of disclosure of criteria, assumptions and data underlying transmission system plans;

(v) The obligations of and methods for customers to submit data to the transmission provider;

(vi) The dispute resolution process;

(vii) The transmission provider's study procedures for economic upgrades to address congestion or the integration of new resources; and

(viii) The relevant cost allocation procedures or principles.

Attachment L—Creditworthiness Procedures

For the purpose of determining the ability of the Transmission Customer to meet its obligations related to service hereunder, the Transmission Provider may require reasonable credit review procedures. This review shall be made in accordance with standard commercial practices and must specify quantitative and qualitative criteria to determine the level of secured and unsecured credit.

The Transmission Provider may require the Transmission Customer to provide and maintain in effect during the term of the Service Agreement, an unconditional and irrevocable letter of credit as security to meet its responsibilities and obligations under the Tariff, or an alternative form of security proposed by the Transmission Customer and acceptable to the Transmission Provider and consistent with commercial practices established by the Uniform Commercial Code that protects the Transmission Provider against the risk of non-payment.

Additionally, the Transmission Provider must include, at a minimum, the following information concerning its creditworthiness procedures:

(1) A summary of the procedure for determining the level of secured and unsecured credit;

(2) A list of the acceptable types of collateral/security;

(3) A procedure for providing customers with reasonable notice of changes in credit levels and collateral requirements;

(4) A procedure for providing customers, upon request, a written explanation for any change in credit levels or collateral requirements;

(5) A reasonable opportunity to contest determinations of credit levels or collateral requirements; and

(6) A reasonable opportunity to post additional collateral, including curing any non-creditworthy determination.

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Part III

Department of Labor

Employee Benefits Security Administration

Proposed Exemptions Involving; D–11082 & D–11109—Deutsche Bank, AG; D–11263—Banc One Investment Advisors Corporation and J.P. Morgan Investment Management Inc.; D–11449—Pileco, Inc. Employees Profit Sharing Plan; and D–11460—Mellon Bank N.A.; Notice

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application Nos. D–11082 & D–11109; D–11263; D–11449; and D–11460]

Proposed Exemptions Involving; D–11082 & D–11109—Deutsche Bank, AG; D–11263—Banc One Investment Advisors Corporation and J.P. Morgan Investment Management Inc.; D–11449—Pileco, Inc. Employees Profit Sharing Plan; and D–11460—Mellon Bank N.A.

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of Proposed Exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Room N–5700, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. ____, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to EBSA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: *moffitt.betty@dol.gov*, or by FAX to (202) 219–0204 by the end of the scheduled comment period. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemption will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemption was requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of proposed exemption are issued solely by the Department.

The application contains representations with regard to the proposed exemption which is summarized below. Interested persons are referred to the application on file with the Department for a complete statement of the facts and representations.

Deutsche Bank, AG (Deutsche Bank or the Applicant)

Located in Germany, with Affiliates in New York, NY and Other Locations.

[Application Nos. D–11082 and D–11109]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act (or ERISA) and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).[1]

Section I. Covered Transactions

If the proposed exemption is granted, the restrictions of sections 406(a)(1)(A) through (D) and 406(b)(1) and (b)(2) of the Act, and the taxes imposed by section 4975(a) and (b) of Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the following foreign exchange transactions involving less developed currencies, that are executed by Deutsche Bank or a current or future affiliate (domestic or foreign) thereof that is a bank or broker-dealer, acting as a local subcustodian in connection with a determination by Deutsche Bank or its affiliates to invest the assets of a client plan, an in-house plan whose assets are invested in a separately managed account with Deutsche Bank, or a pooled fund, in foreign securities, if the conditions set forth in Sections II, III and IV below are met with respect to:

(1) A trade-related currency conversion, or

(2) An income item conversion.

Section II. General Conditions

(a) At the time the foreign exchange transaction is entered into, the terms of the transaction are not less favorable to the client plan, in-house plan or pooled fund than the terms generally available in a comparable arm's length foreign exchange transaction between unrelated parties.

(b) The exchange rate used for a particular foreign exchange transaction does not deviate by more than 3 percent (above or below) the interbank bid and asked rates for such currency at the time of the transaction as displayed on an independent, nationally-recognized service that reports rates of exchange in the foreign currency market for such currency.

(c) The covered transactions are limited to those less developed currencies in which a transaction is executed with Deutsche Bank or its affiliate acting as local subcustodian at the direction of the global custodian because the global custodian either does not make a market in such currency, or otherwise determines to execute with the local subcustodian because of market conditions, market restrictions, illiquidity of the currency or similar exigencies.

(d) Where a market is served by more than one subcustodian, Deutsche Bank, as asset manager, has no decision making authority or role, or otherwise makes no recommendations with respect to the global custodian's selection of the subcustodian.

(e) The foreign exchange transaction is executed by Deutsche Bank or its

[1] For purposes of this proposed exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

affiliate thereof acting as subcustodian at the direction of the global custodian in the ordinary course of its business as global custodian.

(f) The decision to select Deutsche Bank or its affiliate as the subcustodian is made by a global custodian which is unrelated to Deutsche Bank or any affiliate thereof.

(g) The selection of Deutsche Bank or its affiliate as subcustodian and any foreign exchange transactions executed by Deutsche Bank or its affiliate at the direction of the global custodian are not part of any agreement, arrangement or understanding, written or otherwise, designed to benefit Deutsche Bank, its affiliate or any other party in interest.

(h) Deutsche Bank or its affiliate appoints an independent fiduciary to represent the interests of (1) an in-house plan, or (2) plans investing in a large pooled fund.

(i) The decision to invest in a market and to select Deutsche Bank or its affiliate as asset manager is part of an investment strategy that is adopted by an independent fiduciary of a client plan, the independent fiduciary of an in-house plan, the independent fiduciary of a large pooled fund, or the independent fiduciary of an unrelated pooled fund.

(j) On an annual basis, the percentage of assets of in-house plans and pooled funds for which Deutsche Bank and/or its affiliates select the global custodian represent less than 20 percent of the total assets under custody by any such global custodian.

(k) Foreign affiliates of Deutsche Bank who engage in the covered transactions—

(1) Agree to submit to the jurisdiction of the United States;

(2) Agree to appoint an agent for service of process in the United States, which may be an affiliate (the Process Agent);

(3) Consent to service of process on the Process Agent;

(4) Agree that they may be sued in the United

States Courts in connection with the covered transactions described in this proposed exemption;

(5) Agree that any judgment on behalf of a plan or pooled fund may be collected in the United States from Deutsche Bank; and

(6) Agree to comply with, and be subject to, all relevant provisions of the Act.

(l) With respect to the covered transactions—

(1) Deutsche Bank or its affiliate designates an individual responsible for periodically (but no less frequently than on an annual basis) reviewing a sample of such foreign exchange transactions to determine whether the covered transactions have been executed in accordance with the terms of this exemption. Such sample must include a sufficient number of transactions to ensure that each affected currency is tested.

(2) Deutsche Bank or its affiliate provides such individual with the records (which may be provided electronically) described in Section IV(a)(1)-(7), on an annual basis.

(3) Such individual notifies Deutsche Bank or its affiliate, the independent fiduciary of a client plan, the independent fiduciary of an in-house plan, the independent fiduciary of a large pooled fund, the independent fiduciary of an unrelated pooled fund, or the receiving fiduciary of a small pooled fund, of its findings in a written report within 90 days after the period to which the periodic review relates. Such report describes the steps performed by such individual during the course of the review, the level of compliance by Deutsche Bank or its affiliate with the terms and conditions of the exemption, and any specific instances of non-compliance by Deutsche Bank or its affiliate with the terms and conditions of the exemption.

Section III. Notice Requirements

(a) At the time Deutsche Bank or its affiliate is retained as asset manager, or prior to the initial investment of the plan's assets or pooled fund's assets in any foreign investments that may require the execution of a foreign exchange transaction by Deutsche Bank or its affiliate as subcustodian, Deutsche Bank or its affiliate provides the independent fiduciary of a client plan, the independent fiduciary of an in-house plan, the independent fiduciary of a large pooled fund, the independent fiduciary of an unrelated pooled fund, or the receiving fiduciary of a small pooled fund, a written notice (which may be effected electronically) that includes the following:

(1) The reasons why Deutsche Bank or its affiliate may consider a particular market to be an appropriate investment for the plan or pooled fund.

(2) The factors considered by Deutsche Bank or its affiliate in its selection of global custodian (if applicable) including: (i) the identity of the global custodian; and (ii) a summary of the global custodian's policies and procedures regarding the handling of foreign exchange transactions for plans or pooled funds with respect to which Deutsche Bank or its affiliate is a fiduciary and the factors that the global custodian considers in its selection of a subcustodian.

(3) Notice that such foreign exchange transaction may be executed by Deutsche Bank or its affiliate as subcustodian, at the direction of a global custodian.

(4) A list of the markets in which plans or pooled funds may invest where Deutsche Bank or its affiliate serves as a subcustodian.

(5) A list of the markets where currency transactions are executed by a subcustodian, to the extent known.

(6) Notice that Deutsche Bank or its affiliate maintains records (described in Section IV), and such records are reasonably available at their customary location for examination in the U.S., during normal business hours, by the responsible reviewing individual, the independent fiduciary of a client plan, the independent fiduciary of an in-house plan, the independent fiduciary of a large pooled fund, the independent fiduciary of an unrelated pooled fund, or the receiving fiduciary of a small pooled fund, any participant or beneficiary of such plan or pooled fund, or any duly authorized employee or representative of such participant or beneficiary.

(7) Copies of the notice of proposed exemption and the grant of final exemption with respect to the subject transactions.

(b) If the independent fiduciary fails to object in writing to Deutsche Bank or its affiliate within 30 days following receipt of the information described in section III(a) by such fiduciary, then such fiduciary's authorization of the arrangement contemplated under this exemption shall be presumed.

(c) Deutsche Bank or its affiliate shall provide notification of any changes to the information required by Section III, including, but not limited to, the situation where Deutsche Bank or its affiliate replaces the global custodian with another independent entity or where there are changes in the markets in which currency transactions are executed by the subcustodian. If the independent fiduciary fails to object in writing to Deutsche Bank or its affiliate within 30 days following disclosure of such changes, such fiduciary's approval of these changes shall be presumed.

Section IV. Recordkeeping Requirements

(a) Deutsche Bank or its affiliate maintains, or causes to be maintained, for a period of six years from the date of the covered transactions, the following records, as well as any records necessary to enable the persons described in paragraph (c) of this

Section IV, to determine whether the conditions of this exemption have been met:

(1) The account name,

(2) The foreign exchange transaction execution date,

(3) The exchange rate,

(4) The high and low on Reuters or similar independent service on the date of the transaction,

(5) The identity of the foreign currency sold or purchased,

(6) The amount of foreign currency sold or purchased,

(7) The amount of U.S. dollars exchanged, where the exchange is between foreign currencies and U.S. dollars or the amount of foreign currency exchanged, where the exchange is between two foreign currencies, and

(8) The annual report described in Section II(l).

(b) The following are exceptions to paragraph (a) of this Section IV:

(1) If the records necessary to enable the persons described in paragraph (c) to determine whether the conditions of the exemption have been met are lost or destroyed, due to circumstances beyond the control of Deutsche Bank, then no prohibited transaction will be considered to have occurred solely on the basis of the unavailability of those records; and

(2) No party in interest, other than Deutsche Bank, shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (c) below.

(c)(1) Except as provided in paragraph (c)(2) of this Section IV and notwithstanding the provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to above in paragraph (a) of this Section IV are unconditionally available for examination during normal business hours at their customary location to the following persons or an authorized representative thereof:

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service (the Service);

(ii) The independent fiduciary of a client plan, the independent fiduciary of an in-house plan, the independent fiduciary of a large pooled fund, the independent fiduciary of an unrelated pooled fund, or the receiving fiduciary of a small pooled fund, or

(iii) Any participant or beneficiary of such plans or pooled funds or any duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described above in paragraphs (ii) and (iii) of this paragraph (c)(1) of this Section IV shall be authorized to examine trade secrets of Deutsche Bank, or any commercial or financial information, which is privileged or confidential.

Section V. Definitions

For purposes of this proposed exemption,

(a) The term ''Deutsche Bank'' means Deutsche Bank AG.

(b) An ''affiliate'' of Deutsche Bank means any domestic or foreign bank or broker-dealer directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with Deutsche Bank;

(c) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) The term ''bank'' means a bank as defined in section 202(a)(2) of the Investment Advisers Act of 1940 (the Investment Advisers Act), or an institution that has substantially similar powers to a bank defined in section 202(a) of the Investment Advisers Act, and is —

(i) Supervised by the United States or a State;

(ii) Supervised and examined by the German banking authorities, or monitored and controlled pursuant to the statutory and regulatory standards of German law; or

(iii) Subject to regulation and oversight by governmental entities that are substantially similar to the regulatory oversight of banks present in the United States.

(e) The term ''broker-dealer'' means a broker-dealer registered under the Securities Exchange Act of 1934, or is engaged in the business of effecting transactions in securities for the account of others, and is —

(i) Registered and regulated under the relevant securities laws of the United States;

(ii) Registered and regulated under the relevant securities laws of Germany; or

(iii) Registered and regulated under the relevant securities laws of a country with securities laws that are substantially similar to the securities laws governing broker-dealers in the United States.

(f) The term ''global custodian'' means a bank or broker-dealer that is unrelated to Deutsche Bank or its affiliate, which is selected by (1) The named fiduciary of a client plan; (2) the sponsor (other than Deutsche Bank or its affiliate) of an unrelated pooled fund; (3) Deutsche Bank or its affiliate in the case of an in-house plan; or (4) Deutsche Bank or its affiliate in the case of a pooled fund established by Deutsche Bank or an affiliate, for the purpose of holding and safeguarding all assets of the client plan, in-house plan, or pooled fund, physically or through a depository, through its branches or through its subcustodian network.

(g) The term ''subcustodian'' means a bank or broker-dealer, selected by a global custodian, to hold and safekeep designated assets of the plan or pooled fund at securities depositories, foreign clearing agencies or other entities which act as securities depositories, and to execute foreign exchange transactions and income item conversions. A subcustodian has no contractual relationship with the global custodian's clients, but only with the global custodian.

(h) The term ''responsible reviewing individual'' means a senior official appointed by Deutsche Bank who has at least 10 years experience with the fiduciary responsibility provisions of the Act, and appropriate compliance training. Such person is appointed by Deutsche Bank to review a sample of the covered transactions periodically, but no less frequently than on an annual basis, in order to ensure compliance with the terms of the exemption on behalf of a client plan an in-house plan, or a pooled fund.

(i) The term ''in-house plan'' means a plan sponsored by Deutsche Bank or any person that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, Deutsche Bank.

(j) The term ''client plan'' means an employee benefit plan, other than a plan sponsored by Deutsche Bank, as described in section 3(3) of the Act or section 4975(e)(1) of the Code with respect to which Deutsche Bank or its affiliate acts as a fiduciary having full investment discretion.

(k) The term ''pooled fund'' means a collective investment fund or a pooled arrangement established for investment on behalf of two or more unrelated employee benefit plans by Deutsche Bank or an affiliate or by a fund sponsor other than Deutsche Bank or an affiliate for which Deutsche Bank or its affiliate acts as fiduciary with full investment discretion. The assets of a pooled fund may include the assets of (i) Client plans, (ii) in-house plans of Deutsche Bank or an affiliate, (iii) other pooled funds in which Deutsche Bank or an affiliate is not the fund sponsor, and (iv) other pooled funds in which Deutsche Bank or an affiliate is the fund sponsor.

(l) The term ''large pooled fund'' refers to a pooled fund that is sponsored

and managed by Deutsche Bank or an affiliate. A large pooled fund may include the assets of (i) Client plans, (ii) in-house plans of Deutsche Bank or an affiliate, (iii) other pooled funds in which Deutsche Bank or an affiliate is not the fund sponsor, and (iv) other pooled funds in which Deutsche Bank or an affiliate is the fund sponsor. In a large pooled fund, the total invested assets of an in-house plan (or in-house plans), if aggregated (whether invested directly or indirectly through another pooled fund), represent more than 20% of the total invested assets of such fund. Also, in a large pooled fund, Deutsche Bank will appoint an independent fiduciary, as described in Section V(o) below, to represent the interests of all plans investing in such fund.

(m) The term ''small pooled fund'' refers to a pooled fund that is sponsored and managed by Deutsche Bank or an affiliate. A small pooled fund may include the assets of (i) Client plans, (ii) in-house plans of Deutsche Bank or an affiliate, (iii) other pooled funds in which Deutsche Bank or an affiliate is not the fund sponsor, and (iv) other pooled funds in which Deutsche Bank or an affiliate is the fund sponsor. In a small pooled fund, the total invested assets of an in-house plan (or in-house plans), if aggregated (whether invested directly or through another pooled fund), represent less than 20% of the total invested assets of such fund.

(n) The term ''unrelated pooled fund'' refers to a pooled fund that is not sponsored by Deutsche Bank or an affiliate, but is managed by either of these entities.

(o) The term ''independent fiduciary'' means —

(1) In the case of a client plan or an unrelated pooled fund, a plan fiduciary or the named fiduciary of a pooled fund that is unrelated to, and independent of, Deutsche Bank and it affiliates. For purposes of this exemption, a plan fiduciary will be deemed to be unrelated to, and independent of, Deutsche Bank if such fiduciary represents that neither such fiduciary, nor any individual responsible for the decision to authorize or terminate authorization for the transactions described in Section I, is an officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of Deutsche Bank and represents that such fiduciary must advise Deutsche Bank or its affiliate if those facts change, or

(2) In the case of an in-house plan or a large pooled fund, an individual or company is unrelated and independent of Deutsche Bank and its affiliates if such individual or company has at least 10 years experience in the financial services business and significant experience in foreign currency trading and pricing who certifies that the gross income received from Deutsche Bank and its affiliates for the current year does not exceed 5% of such fiduciary's gross income from all services for the prior fiscal year. The independent fiduciary represents that such fiduciary is aware of its ERISA duties and responsibilities in acting as a fiduciary with respect to an in-house plan and the covered transactions.

(3) Notwithstanding anything to the contrary in this Section V(o), a plan fiduciary is not independent if—

(i) Such fiduciary directly or indirectly controls, is controlled by, or is under common control with Deutsche Bank, other than described herein;

(ii) Such fiduciary directly or indirectly receives any compensation or other consideration from Deutsche Bank for his own personal account in connection with any transaction described in this exemption in excess of the 5 percent gross income limitation set forth in Section V(o)(2) above;

(iii) Any officer, director or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of Deutsche Bank or an affiliate responsible for the transactions described in Section I is an officer, director or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of the client plan sponsor, the sponsor of an unrelated pooled fund, or of the fiduciary responsible for the decision to authorize or terminate authorization for transactions described in Section I. However, if such individual is a director of the client plan sponsor, the sponsor of an unrelated pooled fund, or of the responsible fiduciary, and if he or she abstains from participation in (A) the choice of Deutsche Bank or an affiliate as the investment manager/adviser for the client plan or unrelated pooled fund and (B) the decision to authorize or terminate authorization for transactions described in Section I, then Section V(o)(3)(iii) shall not apply.

(p) The term ''officer'' means a president, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), or any other officer who performs a policy-making function for the entity.

(q) The term ''receiving fiduciary'' means a person or entity in a small pooled fund who is designated to receive the disclosures described in Sections III and IV above, for dissemination to the fiduciaries of plans or other pooled funds participating in such small pooled fund.

(r) The term ''foreign exchange'' transaction means the exchange of the currency of one nation for the currency of another nation.

(s) The term ''less developed currencies'' means those currencies in which the global custodian does not make a market at the time of the transaction and in which the global custodian determines to purchase from or sell to the plan's or pooled fund's local subcustodian on behalf of a plan or pooled fund because the currency is difficult to trade, undeveloped or the subject of local government restrictions, or because of the volatility or lack of liquidity in the market at the time of the transaction. The term ''less developed currencies'' does not include the following currencies: the Euro; the British pound; the Swiss franc, the Canadian dollar; or the Japanese yen.

(t) The term ''trade-related currency conversion'' means the conversion of trade-related items (i.e., amounts necessary for purchases or proceeds from sales) into foreign currency or into U.S. dollars in order to permit purchase transactions to settle, and to permit proceeds of sales to be deployed in other investments or to be used to make distributions.

(u) The term ''income item conversions'' means the conversion of income items (e.g., interest, dividends, tax reclaims or other distributions) denominated in a foreign currency into U.S. dollars or another foreign currency.

Effective Date: If granted, this proposed exemption will be effective as of the date the proposed exemption is published in the **Federal Register**.

Summary of Facts and Representations

Deutsche Bank

1. Deutsche Bank is a German banking corporation and commercial bank, which provides a wide range of services to various types of entities worldwide. Deutsche Bank is a financial institution that in 2006 managed approximately $716 billion in assets either through collective trusts, separately managed accounts or mutual funds. Deutsche Bank's asset management clients include a number of employee benefit plans covered by the Act, either in:

(a) Separately managed accounts, where the plan sponsor, and not the Applicant selects the global custodian, (b) pooled funds, where the fund sponsor, and not the Applicant selects the global custodian, and (c) pooled funds where the Applicant selects the global custodian, or (d) for its own plans, where the Applicant selects the global custodian.

Regulatory Authority

2. The Applicant states that it is subject to a comprehensive system of regulatory oversight and a mandatory insurance program. With respect to the regulatory and supervisory requirements applicable to Deutsche Bank, the Applicant states that Deutsche Bank, its branches, and its subsidiary banks worldwide are subject to regulatory requirements and protections that are, qualitatively, at least equal to those imposed on U.S.-domiciled banks.[2] Within the United States, the New York branch of Deutsche Bank and Deutsche Bank Trust Company Americas are regulated and supervised by the New York State Banking Department. In addition, certain activities of Deutsche Bank's New York branch and Deutsche Bank Trust Company Americas (the trustee of ERISA-covered bank collective trusts) are regulated and supervised by the Federal Reserve Bank of New York. Deutsche Asset Management Inc. and Deutsche Investment Management Americas Inc. are investment advisers registered under the Investment Advisers Act of 1940 and supervised by the Securities and Exchange Commission. With respect to Deutsche Bank itself, globally, the bank is regulated and supervised by the Bundesanstalt für Finanzdienstleistungsaufsicht (the BAFin), in cooperation with the Bundesbank. The BAFin is a federal institution with ultimate responsibility to the German Ministry of Finance. The Bundesbank, in turn, is the central bank of the Federal Republic of Germany and a part of the European Central Banks.

3. The Applicant states that the BAFin requires that it have procedures for monitoring and controlling its worldwide activities through the implementation of various statutory and regulatory standards. Among those standards are requirements for adequate internal controls, oversight, administration, and financial resources. The BAFin reviews compliance with these operational and internal control standards through an annual audit performed by the year-end auditor and through special audits ordered by the BAFin. In addition to the regulatory and supervisory arrangements described above, the Applicant states that Deutsche Bank and its foreign branches are covered under a mandatory deposit insurance program.[3] According to the Applicant, this insurance program is maintained by an institution separate from Deutsche Bank and is supervised by the BAFin. The program insures deposits denominated in the currency of a European Economic Area member state up to the lesser of 90 percent of the deposit amount or 20,000 Euros.

Request for Exemptive Relief

4. The Applicant seeks an exemption to permit plans, either directly or through pooled arrangements, to engage in certain trade-related and income-related foreign exchange transactions through subcustodians selected by unaffiliated global custodians in connection with a determination by Deutsche Bank and its affiliates to invest assets of a client plan, an in-house plan or a pooled fund in foreign securities. As described below, in some cases, the subcustodians selected by such global custodian will be Deutsche Bank and its current and future affiliates. The Applicant notes that the requested exemption would not apply to foreign exchange transactions for reasons other than trade-related currency conversions, or income item conversions. If granted, the exemption would be effective as of the date the notice of proposed exemption is published in the **Federal Register**.

Global Strategy

5. As noted above, Deutsche Bank acts as an investment manager to numerous plans, many of which are managed in a global strategy. In such strategies, each time a transaction is entered into, or income on held securities is received, a foreign exchange transaction is required. For example, if the investment manager decides to invest plan assets in a Japanese security, a trade-related currency conversion is required to convert the plan's U.S. dollars into the amount of Japanese yen required to purchase the security and settle the transaction. Similarly, each time a Japanese fixed income instrument pays interest (generally, semiannually or quarterly), that payment, which is made in yen, will generally be converted back to U.S. dollars.

6. The Applicant states that in well-developed markets, such as the one described above, there are many banks and broker-dealers with which the investment manager can effect transactions involving foreign currency. In addition, the Applicant states there is little difficulty, either from a price or a settlement perspective, in doing so, with respect to freely traded currencies, such as the British pound, the Euro, and the Japanese yen. The Applicant represents that in effecting foreign exchange transactions in well-developed markets for an account, the investment manager generally has two options: (a) to send the transaction to the account's global custodian, in which case the transactions are generally effected at the global custodian's own proprietary desk in the U.S. or at the global custodian's London branch; or (b) to find a counterparty to effect the transaction, other than the account's global custodian.

7. The Applicant states that the choices differ somewhat with respect to emerging markets, which include much of Central and South America, Africa, and Asia.[4] According to the Applicant, in markets where currency is hard to trade, undeveloped, or subject to local restrictions, the investment manager still chooses between routing the trade to its global custodian, or locating another counterparty, if it can find a counterparty with adequate credit and performance. In many instances, an investment manager cannot locate a counterparty of its own, and these instances generally occur in the same less developed currencies where the global custodian is unable or unwilling to make a market in that currency and instead will usually rely on a subcustodian in the applicable market, which may be the Applicant's affiliate. With respect to the option of locating another counterparty, the Applicant states that the investment manager would need to locate a local bank or broker-dealer in the applicable market, open a trading account after investigating the bank or broker-dealer's credit, and would then trade directly with that bank or broker-dealer, while relying on the global custodian to settle both the securities transaction and the foreign exchange transaction.

8. According to the Applicant, in markets where the currency is illiquid, or the penalties for transaction failure are severe, an investment manager generally does not attempt to locate a counterparty in the local market. Rather, the Applicant believes that it is very often the practice of investment managers to send foreign exchange transactions to the global custodian for execution, to obtain more certainty that

[2] In support of this, the Applicant notes that the U.S. Department of Treasury has accorded national treatment to German bank branches, and the German Ministry of Finance has granted relief to branches of U.S. banks in Germany, in particular with respect to ''dotation'' or endowment capital requirements and capital adequacy standards.

[3] The Applicant states that, in addition, Deutsche Bank and its foreign branches are covered by a voluntary deposit protection program called the Deposit Protection Fund that safeguards liabilities in excess of the thresholds guaranteed by the European Union Program discussed above.

[4] The list of emerging market currencies may change from time to time, as conditions change in the world market. For example, during recent years, the Argentine peso has transitioned back and forth from being freely traded to restricted.

the underlying securities transaction, with its foreign exchange component, will settle in a timely fashion.[5] The Applicant states that not doing so raises the risk that the entire transaction will fail because the currency transaction becomes separated from the securities transaction in a market that is either very manual or where the settlement period is very short. The Applicant represents that where the penalty for failure is thousands of dollars or a suspension of one's license to trade, it is particularly important that an asset manager take all steps possible to avoid settlement failure.

Global Custody/Subcustody Arrangements

9. The Applicant states that each plan generally appoints a ''global custodian'' other than Deutsche Bank or its affiliate to hold and safekeep plan assets. A global custodian is typically a bank or trust company, selected by an independent plan fiduciary for a client plan, a sponsor of an unrelated pooled, or Deutsche Bank as asset manager for an in-house plan or a pooled fund. The Applicant further explains that assets are held either by the global custodian itself, or through a nominee, physically, or through a depository, in the United States or outside of the United States, through its branches or through its subcustody network, which generally consists of foreign banks or branches of U.S. banks, including its own branches. Accordingly, the Applicant states that even though Deutsche Bank or its affiliates, as trustee, may choose the global custodian in the case of a collective investment fund or other pooled fund it sponsors (rather than an independent fiduciary of a client plan, in the case of a separately managed account), the reasons for preferring conversion through one's global custodian are precisely the same for both types of accounts.[6]

10. The Applicant explains that a subcustodian is generally a bank or trust company, foreign or domestic, which is selected by a global custodian, to hold and safekeep designated assets of the plan, including in its own name, at securities depositories, or at foreign clearing agencies or other entities which act as securities depositories. The Applicant states that a subcustodian has no contractual relationship with the global custodian's clients (i.e., plans or other accounts), but only with the global custodian.

11. According to the Applicant, one of the most important functions of a global custodian is to provide a foreign exchange facility for its customers, either through a central global trading desk, for readily tradable currencies, or through its subcustody network, for less developed currencies. The Applicant represents that, in all cases where it acts as investment manager for plan assets, a global custodian is solely in charge of selecting its subcustody network. The Applicant further represents that it is the responsibility of the global custodian to monitor its subcustodians on all performance and credit issues. Generally, the asset manager for an account (or the trustee for a collective investment fund) has no direct contact at all with the subcustodian.

12. With respect to selection of subcustodians, the Applicant states that a global custodian may have more than one option to choose from, and may, in fact, use more than one subcustodian in a market, depending on its business needs, but a particular account is only subcustodied with one subcustodian (i.e., all the assets of the plan in that market are held with one subcustodian). The Applicant represents that generally, if the global custodian uses more than one subcustodian (i.e., puts some clients with one and some with another, because of size, diversification of risk, price competition or credit concerns), the choice of which clients are assigned to which subcustodian is made by the global custodian, not by the client. However, the Applicant notes that it is far more common for a global custodian to have one subcustodian. The Applicant states that an account is held at that subcustodian, and the investment manager knows its identity, because all transactions are settled by the subcustodian, and information regarding the subcustodian is required when giving counterparties settlement instructions.

The Applicant explains that a subcustodian is not hired on a transaction by transaction basis, but remains the subcustodian for an account until the global custodian replaces the subcustodian for that entire account.

The Applicant represents that a subcustodian's relationship with the global custodian is generally governed by a standard contract which the global custodian presents to all of its subcustodians. Client accounts are not parties to the contract.

13. The Applicant represents that it has no control or input with respect to the subcustodians selected by a global custodian or the procedures the global custodian uses in making such selections. Therefore, the decision to select Deutsche Bank or its affiliate as subcustodian by the global custodian, and any foreign exchange transactions executed by Deutsche Bank or its affiliate at the direction of the global custodian, are not part of an understanding, arrangement, agreement, written or otherwise, designed to benefit Deutsche Bank, its affiliates or another party in interest.[7] Furthermore, the decision to invest in a market and to select Deutsche Bank or its affiliates as asset manager is part of an investment strategy that is adopted by an independent fiduciary of a client plan, an independent fiduciary of an in-house plan, an independent fiduciary of a large pooled fund, or an independent fiduciary of an unrelated pooled fund.

For example, the Applicant states that even in a market where more than one subcustodian is available, assume that the global custodian has a choice between using the Applicant's affiliate, Large International Bank X, and several local banks. The Applicant explains that if the global custodian preferred to select the Applicant's affiliate due to past experience with the other banks, transaction costs, each bank's credit rating, or other factors, the global custodian may select the Applicant's affiliate. The Applicant states that the global custodians use their own internal procedures and safeguards to select subcustodians for their clients, including any plans for which Deutsche Bank or its affiliate may serve as a trustee, investment manager, fiduciary or other party in interest. The Applicant represents that, in selecting a global custodian, the trustee would generally look at such factors as price (including the cost of transactions inside and outside of the network, reputation, the size of the global custodian's subcustody network, the number of markets in which the global custodian has subcustodians, the number of markets where interest is credited overnight, the global custodian's error rate and responsiveness, the number and performance of cash sweep vehicles offered by the global custodian, the global custodian's securities lending program, and the technology used by the global custodian and its subcustodians, among many other considerations.

[5] When trades are routed to the global custodian, it becomes responsible for ensuring that the subcustodian settles both the foreign exchange conversion, and the underlying transaction.

[6] Deutsche Bank represents that since 2003, it has not acted as global custodian for plans.

[7] The Applicant notes that Deutsche Bank asset management division is separate from the Deutsche Bank's custody division, and this condition does not preclude the custody division from marketing its services to the global custodian.

Trade-Related Currency Conversions

14. The Applicant seeks relief with respect to certain trade-related foreign exchange transactions in markets with less developed currencies or in restricted markets. Specifically, Deutsche Bank is requesting that the proposed exemption apply to situations where Deutsche Bank (or its current or future affiliates) act as an investment manager to a plan or pooled fund, and the plan or pooled fund engages in certain trade-related currency conversions with the Applicant (or its affiliate), acting as a subcustodian with respect to the assets involved in the transaction. The Applicant notes that the requested relief would only apply to those currencies where the global custodian does not itself make a principal market in the currency and where the global custodian has selected a Deutsche Bank affiliate as subcustodian and sends client trades to that subcustodian.

15. According to the Applicant, trade-related currency conversions may be necessary in several situations. For example, the Applicant states that where plan assets managed by the Applicant or its affiliate are subcustodied with its affiliate, exemptive relief is necessary for such transactions to take place, because Prohibited Transaction Exemption (PTE) 98–54 (63 FR 63503, November 13, 1998) does not provide relief for managed accounts, or for the Applicant's foreign affiliates. PTE 98–54 requires that, in a purchase or sale transaction between a bank and a plan, the bank (or any domestic affiliate thereof) must be ''supervised by the United States or a State thereof.'' The Applicant further notes that, when operating outside the United States, Deutsche Bank is not supervised by a State or by the United States.

The Applicant represents that trade-related currency conversions are necessary with respect to both well-developed and less developed currencies. However, in the absence of the requested relief, asset management in emerging markets is nearly impossible to undertake where the global custodian has selected a Deutsche Bank affiliate as subcustodian. As the Applicant describes above, in order for a plan to purchase a foreign security or other investment, it is often necessary to make a trade-related currency conversion in order to facilitate the purchase transaction. In addition, the Applicant states that such currency conversions may be necessary for purposes of investing sales proceeds in other investments, or for making distributions of such proceeds. According to the Applicant, in cases where the manager wants to avoid currency risk, or to convert funds to a different currency to experience higher returns (such as a conversion from foreign currency to U.S. dollars, in order to experience higher returns available on a U.S. investment), it is important that the investment manager be able to convert available funds quickly.

16. The Applicant states that there are generally no additional fees added to transactions executed within a global custodian's subcustody network, while additional charges are often incurred for transactions done outside that network. The Applicant represents that those additional fees may make the currency conversion transaction disadvantageous to the plan for still another reason—price. In addition, the Applicant represents that, because the subcustodian generally receives significant transaction flow from the global custodian, which is also monitoring rates and performance, it is more likely that the rates provided by the subcustodian will be at least as good as might be available from a local bank or broker-dealer outside the global custodian's network. While the Applicant is not a global custodian and cannot describe each global custodian's practices, the Applicant believes that it is customary for all custody client trades to be forwarded to a subcustodian at the same time, and for the trades to be executed at the same rate as other trades received by the subcustodian at approximately the same time. The Applicant notes that confirmations of the transactions do not always reflect where the foreign exchange trade was executed. The investment manager generally does not know the rate before a foreign exchange trade is executed, and the manager may know the range in which it will fall and will approve that range. The Applicant states that the investment manager is advised of the rate late in the day for western hemisphere trades, and the next morning for the eastern hemisphere. The Applicant further represents that these rates can be verified using Reuters or a similar service.

17. According to the Applicant, in effecting foreign exchange transactions, the investment manager would generally rely on PTE 84–14 (49 FR 9494, March 13, 1984), or PTE 91–38 (67 FR 9483, March 1, 2002). However, the Applicant states that neither exemption is available where the trade is routed to a subcustodian who is an affiliate of the Applicant. Thus, the Applicant seeks relief for foreign exchange transactions where its affiliate is selected by a global custodian. The Applicant states that not only does the investment manager have no control over the global custodian's selection of subcustodians, but it also cannot control which currencies a global custodian chooses to deal in, which impacts whether the global custodian has to send the foreign exchange transactions to its subcustodian in a particular market. The Applicant further states that the investment manager is not necessarily advised when a currency is added to the global custodian's dealing desk, or deleted from it.

Income-Related Transactions

18. The Applicant also seeks relief, with respect to certain income-related foreign exchange transactions. The covered transactions for which the Applicant requests relief also involve the Applicant or its affiliate, as investment manager for a plan or pooled fund, causing such plan or pooled fund to engage in foreign exchange transactions with the Applicant's affiliates, who may be acting as subcustodian for the assets involved in the transaction. Specifically, the Applicant is requesting an exemption that would apply to income item conversions in all currencies, which would not be covered by PTE 98–54, for the same reasons that the exemption does not apply to trade-related foreign exchange transactions. The Applicant explains that as with trade-related transactions, an income-related transaction is not itself an investment, but is an integral component of a plan's or pooled fund's foreign investment activities.

19. The Applicant states that the purpose of income-related transactions is to convert income items, such as interest, dividends, tax reclaims, and other distributions, either from foreign currency into U.S. dollars, or into another foreign currency. For example, the Applicant states that the manager may wish to convert dividend income to U.S. dollars to permit reinvestment, to enhance the plan's liquidity, or because the earnings on U.S. dollar cash equivalents are higher than the potential earnings on foreign cash equivalents. As with trade-related foreign exchange transactions, conversion may also be desirable to avoid currency risk with respect to income items.

20. According to the Applicant, global banks typically repatriate income through a process called ''auto-repatriation,'' which minimizes the time that income receipts are held in foreign currency. The Applicant states that an account owner (such as a plan sponsor) would choose to use this process at the

inception of its relationship with a global custodian, or its investment manager would select auto-repatriation instead, at the time that it commences its investment management responsibilities for the account. The Applicant notes that disclosure regarding the auto-repatriation process is generally found in the service level agreements provided to customers by a global custodian.

Deutsche Bank further describes the typical auto-repatriation process as follows:

> A global custodian using the auto-repatriation process contracts with a third-party vendor that electronically alerts the global custodian to expected income payments in all global fixed income and equity securities. Generally, that notice is received in advance of the expected income payment date. The global custodian's recordkeeping system, which is linked to the information feed, creates an ''income map,'' or list of all the accounts (whether plan accounts or not) that hold the security with respect to which an income payment is expected, and the amount of the expected payment in the foreign currency for each account. A ''pending transaction'' for the income receipt is created, and the income map aggregates all accounts expecting that income payment and the total income expected for the entire custody client base of the global custodian. The aggregate amount of expected foreign income is sent either to the global custodian's own foreign exchange desk (in the case of developed currencies) or to the subcustodian (in the case of emerging markets or less-developed currencies). In addition, unexpected income items, such as tax reclaims, are also aggregated by currency, bundled with income trades involving non-plan clients of Deutsche Bank, and promptly executed and each aggregated account receives the same foreign exchange prices as all other accounts.

21. Deutsche Bank believes that many cash management programs automatically sweep idle U.S. dollar balances to their designated sweep vehicle at the end of each day. Therefore, the Applicant represents that automatic repatriation allows the account to experience no delay or gap in earning income on the U.S. dollar equivalent of their income payments. The Applicant opines that this is particularly beneficial in countries where either no interest is credited on foreign balances or where the interest credited on the foreign currency balance is relatively low compared to the rate of interest credited on U.S. dollar balances.

The Applicant further represents that auto-repatriation also minimizes the delays inherent in executing income transactions on a piecemeal basis, so that plans are able to realize investment returns on income more quickly. The Applicant states that generally, foreign income trades do not settle until 2 days after the trade date. Thus, if auto-repatriation is not used, the investment manager must wait for foreign income to be received into a plan account, where the manager will actually see the income appear on the next day. According to the Applicant, before acting, the investment manager must first determine whether the amount of the foreign income payment is large enough to trade. If so, the trade will be executed, but not settled until 2 days after the trade date. Therefore, the Applicant states that the account would receive lower interest (or no interest) on foreign income for up to 3 days after the foreign income payment is made. A longer delay may result where the income payment is not large enough to trade (e.g., because, due to the amount of income involved, the transaction costs would exceed the amount of the income receipt).

In contrast, the Applicant represents that when auto-repatriation is used, the expected amount of income is sent to the global custodian or subcustodian before settlement and is aggregated with other income payments. As a result, the Applicant explains that income-related trades are completed quickly and the account (including plan accounts) begins to earn interest on funds as soon as possible.

22. As with trade-related foreign exchange transactions, the Applicant states that participation in auto-repatriation may cause plan assets which are managed by Deutsche Bank or its affiliate to be routed to an affiliate of Deutsche Bank which acts as a subcustodian for the plan. Thus, the Applicant represents that if a plan holds an investment in an emerging market, and the investment produces an income item in that market's currency, auto-repatriation of the income item to U.S. dollars may result in the conversion trade being directed to an affiliate of Deutsche Bank, through the global custodian's auto-repatriation system.

23. The Applicant explains that the direction of trades to an affiliate through auto-repatriation is not something that Deutsche Bank can control, nor would Deutsche Bank necessarily know about it in advance of the trade. Therefore, the Applicant states that the only way to prevent these transactions is for the plan not to repatriate income items using this process. The Applicant represents that, as a result, income items would have to be converted separately, most likely at a significant added cost to plans.

24. According to the Applicant, the inability to be part of the automatic income processing system may also have an unintended effect on the global cash management system. The Applicant represents that most plans rely on their global custodian's deposits or its subcustodian deposits for overnight interest in a particular currency. To the extent that the economics and the inefficiencies of doing small income trades are reasons to leave foreign currency amounts unconverted, the Applicant notes that the transactions which are the subject of the exemption would result in more managed money being held in deposits of the global custodian or the subcustodian.

Summary of Exemption Request

25. The Applicant states that the proposed exemption would apply solely in the context of a global custodian which selects the Applicant's local branch as a subcustodian, in a market where the global custodian does not make a market in the local currency and, thus, the currency can be deemed to be ''less developed'' based on the trading perspective of the global custodian.

The Applicant represents that the proposed exemption would apply only when: (a) A client plan's independent fiduciary or the independent trustee of a pooled fund (other than Deutsche Bank or its affiliate) has chosen a global custodian which, in turn, selects a Deutsche Bank affiliate to act as a subcustodian, or (b) Deutsche Bank or its affiliate, as trustee of a pooled fund or for its in-house plans, chooses a global custodian which selects a Deutsche Bank affiliate to act as a subcustodian. In either case, Deutsche Bank believes that exemptive relief under section 406(b) of the Act may be necessary for both trade-related and income-related foreign exchange transactions effected with its affiliate, if that affiliate is the subcustodian for a plan or a pooled fund in an emerging market, and the Applicant is aware that transactions for foreign exchange in connection with securities or other investment transactions that are sent to the global custodian will be effected through the subcustodian.

With respect to a client plan, the Applicant states that Deutsche Bank or its affiliate has no control over the selection of a global custodian by the independent fiduciary. Furthermore, the Applicant states that Deutsche Bank or its affiliate has no control over: The subcustodian chosen by such global custodian; the global custodian's arrangements with subcustodians; or the global custodian's processes and procedures. Where Deutsche Bank or its affiliate acts as a trustee of a pooled fund or where it acts as a fiduciary for

an in-house plan, the Applicant notes that Deutsche Bank or its affiliate selects the global custodian, but has no control over that global custodian's subcustody network or arrangements with the subcustodians.

26. The Applicant states that the proposed exemption is beneficial to plans because under current law, the only option which the Applicant is able to exercise is not to invest plan assets in certain emerging markets that have less developed currencies. As a result, the Applicant states that the investment opportunities and flexibility available to plans or pooled funds clients are severely limited. The Applicant represents that it needs to be able to trade in emerging markets for plan, or pooled funds, regardless of whom the subcustodian is, so long as it is chosen by someone other than the Applicant or its affiliates.

The Applicant states that the proposed exemption is also beneficial to plans or pooled funds because even in markets where another subcustodian is available, plans may be faced with higher transaction costs. Therefore, using the Applicant's subcustodian may not be an option, even if it offers the same rates as other subcustodians. The Applicant opines that it is not practical or commercially reasonable to require a client plan's global custodian to refrain from using the Applicant's affiliates as subcustodians. In addition, the Applicant again emphasizes that it does not have the ability to control a global custodian from including the Applicant's affiliates in its subcustody networks.

27. The Applicant represents that under the proposed exemption, at the time a foreign exchange transaction is entered into, the terms of the transaction must be no less favorable to the plan or pooled fund than the terms generally available in a comparable arm's length foreign exchange transaction between unrelated parties. In addition, the exchange rate used for a particular foreign exchange transaction must not deviate by more than 3 percent (above or below) the interbank bid and asked rates for such currency at the time of the transaction as displayed on an independent, nationally-recognized service that reports rates of exchange in the foreign currency market for such currency. Further, the Applicant states that the transactions must be executed with the Applicant or its affiliate through the global custodian, in the course of the global custodian's normal transaction processing as global custodian. The Applicant states that these conditions are intended to ensure that the benefits of and costs to the plan are the same as the benefits and costs experienced by other accounts.

28. The Applicant represents that the proposed exemption would not apply to foreign exchange transactions in which the global custodian is the Applicant or its affiliate. As noted above, the Applicant states that it divested itself of its global custody business in 2003. In all cases, the proposed exemption would require that the choice of the Applicant or its affiliate as a subcustodian be made by the unrelated global custodian, and not by the Applicant or its affiliate.

29. The proposed exemption also includes a condition that requires that the assets of plans and pooled funds for which Deutsche Bank and/or its affiliates select the global custodian be less than 20 percent of the total assets under the global custodian's custody.

As for other substantive safeguards, the foreign affiliates of Deutsche Bank agree to submit to the jurisdiction of the United States; agree to appoint a Process Agent in the United States, which may be an affiliate; consent to service of process on the Process Agent; agree that it may be sued in the United States Courts in connection with the covered transactions described in this proposed exemption; agree that any judgment on behalf of a plan or pooled fund may be collected in the United States from Deutsche Bank by the independent fiduciary to the extent applicable; and agree to comply with, and be subject to, all relevant provisions of the Act.

In addition, Deutsche Bank or its affiliate will designate a senior official who has at least ten years experience with the fiduciary responsibility provisions of the Act and appropriate compliance training as the ''responsible reviewing individual.'' Such individual will review the covered transactions periodically (but not less frequently than on an annual basis) to ensure compliance with the terms of the exemption on behalf of a client plan, an in-house plan, or a large pooled fund. Following such review, the responsible reviewing individual will issue a written report to Deutsche Bank, the independent fiduciary of the client plan, the independent fiduciary of the in-house plan, the independent fiduciary of the large pooled fund, the independent fiduciary of the unrelated pooled fund, or the receiving fiduciary of the small pooled fund, within 90 days after the period to which the periodic review relates. The report will describe the steps performed by the responsible reviewing individual during the course of the review, the level of compliance by Deutsche Bank or its affiliate with the terms and conditions of the exemption, and any specific instances of non-compliance by Deutsche Bank or its affiliate with the terms and conditions of the exemption.

If the findings of the responsible reviewing individual disclose that Deutsche Bank or its affiliate has failed to comply with the terms and conditions of this exemption with respect to multiple transactions executed on an on-going basis, or there has been a material factual change to the representations contained in the Summary of Facts and Representations of the proposed exemption, the exemption will no longer be available as of the date of such noncompliance. In the event the exemption is no longer effective, Deutsche Bank may apply for a new exemption seeking retroactive relief from the date it comes back into compliance, provided that Deutsche Bank: (a) Notifies the Department of the period during which it was in noncompliance and the underlying facts of such noncompliance, (b) files a Form 5330 with the Service and pays all applicable excise taxes, (c) makes the affected plan or pooled fund whole if the plan or pooled fund has suffered a loss as a result of such noncompliance, and (d) develops and adopts appropriate policies and procedures to ensure all future transactions are executed in compliance with the terms and conditions of the exemption. In the alternative, if the findings of the responsible reviewing individual disclose that Deutsche Bank has failed to comply with the terms and conditions of this exemption with respect to an isolated transaction, the exemption will continue to provide exemptive relief for covered transactions apart from the non-recurring transaction as long as Deutsche Bank: (a) files a Form 5330 with the Service and pays any applicable excise taxes, and (b) makes the affected plan or pooled fund whole if the plan or pooled fund has suffered a loss as a result of such noncompliance.[8]

With respect to the covered transactions, Deutsche Bank will hire an independent fiduciary to represent the interests of an in-house plan or a large pooled fund. This independent fiduciary will be an individual or company that: (a) Is unrelated and independent of Deutsche Bank, with at least 10 years experience in the financial services business and

[8] The sole failure of a global custodian to comply with a condition of the exemption despite Deutsche Bank's best efforts to ensure the global custodian's compliance, shall not result in the loss of the exemption with respect to Deutsche Bank provided all other conditions have been met.

significant experience in foreign currency trading and pricing; (b) certifies that the gross income such fiduciary receives from Deutsche Bank and its affiliates for the current year does not exceed 5% of such fiduciary's gross income from all services for the prior fiscal year; and (c) represents that it understands its ERISA duties and responsibilities in acting as a fiduciary with respect to the plan(s) (or pooled funds) and the covered transactions. The independent fiduciary will review the transactions executed under the exemption, ask Deutsche Bank questions that it may have regarding such transactions, and take appropriate action on behalf of the plans or pooled funds if it has concerns about the trades.

Further, Deutsche Bank or its affiliate will maintain or cause to be maintained for a period of six years from the date of the covered transactions written records of the transaction to enable persons such as: the responsible reviewing individual, independent fiduciaries of client plans, independent fiduciaries in-house plans, independent fiduciaries of large pooled funds, independent fiduciaries of unrelated pooled funds, receiving fiduciaries of small pooled funds, participants, or representatives of the Department or the Service to determine whether the conditions of the exemption have been met. Such written records include: (a) The account name; (b) the foreign exchange transaction execution date; (c) the exchange rate; (d) the high and low on Reuters or similar service on the date of the transaction; (e) the identity of the foreign currency sold or purchased; (f) the amount of foreign currency sold or purchased; (g) the amount of U.S. dollars exchanged, where the exchange is between foreign currencies and U.S. dollars or the amount of foreign currency exchanged, where the exchange is between two foreign currencies; and (h) the annual report issued by the responsible reviewing individual.

30. Additionally, the proposed exemption includes a requirement that prior to the investment of a plan's or pooled fund's assets in a foreign investment, that may result in the execution of a foreign exchange transaction with Deutsche Bank or its affiliate as subcustodian, Deutsche Bank will provide written notice to the independent fiduciary of a client plan, the independent fiduciary of an in-house plan, the independent fiduciary of a large pooled fund, the independent fiduciary of an unrelated pooled fund, or the receiving fiduciary of a small pooled fund that includes the following information: (a) The reasons why Deutsche Bank or its affiliate may consider the investment appropriate for the plan; (b) the identity of the global custodian and the factors considered in such global custodian's selection; (c) notice that such foreign exchange transaction may be executed by Deutsche Bank or its affiliate at the direction of a global custodian, and full disclosure of all fees that Deutsche Bank or its affiliate may receive as a result of the foreign exchange transaction; (d) in those cases where Deutsche Bank or its affiliate selects the global custodian, a summary of the global custodian's policies and procedures regarding the handling of foreign exchange transactions for plans or pooled funds with respect to which Deutsche Bank or its affiliate is a fiduciary and the factors that the global custodian considers in its selection of a subcustodian; (e) a list of the markets in which Deutsche Bank or its affiliate serves as a subcustodian, and whether a particular market is served by more than one subcustodian; (f) a list of the markets where currency transactions are executed by a subcustodian, to the extent known; (g) notice that Deutsche Bank or its affiliate maintains the required records, and such records are reasonably available at their customary location for examination in the U.S., during normal business hours, by the responsible reviewing individual, the independent fiduciary of a client plan, the independent fiduciary of an in-house plan whose assets are invested in a separately managed account with Deutsche Bank, the independent fiduciary of a large pooled fund, the independent fiduciary of an unrelated pooled fund, the receiving fiduciary of a small pooled fund, any participant or beneficiary of such plan or pooled fund, or any duly authorized employee or representative of such participant or beneficiary; (h) the independent fiduciary shall have 30 days to object in writing to Deutsche Bank or its affiliate, following disclosure by Deutsche Bank or its affiliate of the arrangement contemplated under the exemption. If such fiduciary fails to object in writing within this period, then such fiduciary's authorization of the arrangement shall be presumed; (i) notification of any changes to the information described above, including, but not limited to, the situation where Deutsche Bank or its affiliate replaces the global custodian with another independent entity; and (j) copies of the notice of proposed exemption and grant of final exemption with respect to the subject transactions. Such report may be provided electronically.

In addition, upon the request of the independent fiduciary, and within 90 days of such request, Deutsche Bank or its affiliate will provide compliance reports (which may be transmitted electronically) that demonstrate that the terms of the exemption have been met. Such written reports will include the information described above.

31. In summary, the Applicant represents that the transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act since, among other things:

(a) At the time the foreign exchange transaction is entered into, the terms of the transaction will not be less favorable to the plan or pooled fund than the terms generally available in comparable arm's length foreign exchange transactions between unrelated parties.

(b) The exchange rate used for a particular foreign exchange transaction will not deviate by more than 3 percent (above or below) the interbank bid and asked rates for such currency at the time of the transaction as displayed on an independent, nationally-recognized service that reports rates of exchange in the foreign currency market for such currency.

(c) The covered transactions will be limited to those currencies in which a transaction is executed with a Deutsche Bank affiliate acting as local subcustodian at the direction of the global custodian because the global custodian either does not make a market in such currency, or otherwise determines to execute with the local subcustodian because of market conditions, market restrictions, illiquidity of the currency or similar exigencies.

(d) Where a market is served by more than one subcustodian, Deutsche Bank or its affiliate will have no decision making authority or role with respect to the global custodian's selection of the subcustodian.

(e) The global custodian will not be Deutsche Bank or any affiliate thereof.

(f) The foreign exchange transaction will be executed by Deutsche Bank or its affiliate thereof acting as subcustodian at the direction of the global custodian in its normal course of business as global custodian.

(g) The decision to select Deutsche Bank or its affiliate as the subcustodian will be made by an unrelated global custodian.

(h) The selection of Deutsche Bank or its affiliate as subcustodian and any foreign exchange transactions executed by Deutsche Bank or its affiliate at the direction of a global custodian will not be part of an understanding, arrangement or agreement, written or

otherwise, designed to benefit Deutsche Bank, its affiliate or another party in interest.

(i) The decision to invest in a market and to select Deutsche Bank or its affiliate as asset manager will be part of an investment strategy that is adopted by an independent fiduciary of a client plan, the independent fiduciary of an in-house plan, the independent fiduciary of a large pooled fund, or the independent fiduciary of an unrelated pooled fund.

(j) On an annual basis, the percentage of assets of plans and pooled funds for which Deutsche Bank or its affiliates select the global custodian will be less than 20 percent of the total assets under the global custodian's custody.

(k) Foreign affiliates of Deutsche Bank who engage in the covered transaction will agree to submit to the jurisdiction of the United States Courts and consent to service of process on the Process Agent for purposes of any lawsuits that may be brought in connection with the foreign exchange transactions, and comply with, and be subject to, all relevant provisions of the Act.

(l) Deutsche Bank or its affiliate will designate an individual responsible for reviewing periodically a representative sample of consummated foreign exchange transactions, no less frequently than on an annual basis, to determine whether the covered transactions have been executed in accordance with the terms of this exemption.

(m) Prior to the investment of the plan's assets in a foreign investment that may require the execution of a foreign exchange transaction, Deutsche Bank or its affiliate will provide to the independent fiduciary of a client plan, the independent fiduciary of an in-house plan, the independent fiduciary of a large pooled fund, or the independent fiduciary of an unrelated pooled fund, a written notice (which may be effected electronically) that will include all relevant information pertaining to Deutsche Bank's investment strategy with respect to foreign exchange transactions.

(n) On the basis of such information, the independent fiduciary will adopt Deutsche Bank's investment strategy with respect to foreign exchange transactions.

(o) Upon the request of the independent fiduciary, and within 90 days of such request, Deutsche Bank or an affiliate will provide written compliance reports (which may be transmitted electronically) that demonstrate that the terms of the exemption have been met.

(p) Deutsche Bank or its affiliate will maintain, or will cause to be maintained, for a period of six years from the date of the covered transactions, certain records to enable such persons as: The responsible reviewing individual, the independent fiduciary of a client plan, or any duly authorized representative of the Department or the Service, to determine whether the conditions of this exemption have been met.

Notice to Interested Persons

The Applicant represents that because those potentially interested client plans cannot all be identified at the time this proposed exemption is published in the **Federal Register**, the only practical means of notifying the independent fiduciaries of such plans of the proposed exemption is by publication of the notice of pendency in the **Federal Register**. However, with respect to the fiduciaries of in-house plans (including independent fiduciaries of large pooled funds, independent fiduciaries of unrelated pooled funds, or receiving fiduciaries of small pooled funds), the Applicant will provide copies of the proposed exemption to such interested persons either by first class mail, hand delivery or electronic mail within 15 days of the publication of the proposed exemption in the **Federal Register**. Therefore, written comments and/or requests for a public hearing must be received by the Department not later than 45 days from the date of publication of this notice of proposed exemption in the **Federal Register**.

If granted, this exemption will be available to Deutsche Bank for as long as the terms and conditions of the exemption are satisfied with respect to the assets of client plans, in-house plans or pooled funds that are engaged in the covered foreign exchange transactions.

FOR FURTHER INFORMATION CONTACT: Allison Padams-Lavigne, U.S. Department of Labor, telephone (202) 693–8564. (This is not a toll-free number.)

Banc One Investment Advisors Corporation (BOIA) and J.P. Morgan Investment Management Inc. (JPMIM) and their Affiliates (Collectively, JPMorgan)

Located in New York, New York.

[Application No. D–11263]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code, in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).

Section I—Retroactive Exemption for the Acquisition, Holding, and Disposition of JPMorgan Chase & Co. Stock

If the proposed exemption is granted, the restrictions of sections 406(a)(1)(D), 406(b)(1) and 406(b)(2) of the Act, and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(D) and (E) of the Code, shall not apply, as of January 14, 2004, until the date this proposed exemption is granted, to the acquisition, holding, and disposition of the common stock of JPMorgan Chase & Co. (the JPM Stock) by Index and Model-Driven Funds managed by JPMorgan, provided that the following conditions and the general conditions in Section III are satisfied:

(a) The acquisition or disposition of the JPM Stock is for the sole purpose of maintaining strict quantitative conformity with the relevant index upon which the Index or Model-Driven Fund is based.

(b) The acquisition or disposition of the JPM Stock does not involve any agreement, arrangement, or understanding regarding the design or operation of the Fund acquiring the JPM Stock which is intended to benefit JPMorgan or any party in which JPMorgan may have an interest.

(c) All aggregate daily purchases of JPM Stock by the Funds do not exceed, on any particular day, the greater of:

(1) Fifteen (15) percent of the aggregate average daily trading volume for the JPM Stock occurring on the applicable exchange and automated trading system (as described in paragraph (d) below) for the previous five business days, or

(2) Fifteen (15) percent of the trading volume for the JPM Stock occurring on the applicable exchange and automated trading system on the date of the transaction, both as determined by the best available information for the trades occurring on that date or dates.

(d) All purchases and sales of JPM Stock are either (i) Entered into on a principal basis in a direct, arm's length transaction with a broker-dealer, in the ordinary course of its business, where such broker-dealer is independent of JP Morgan and is either registered under the Securities Exchange Act of 1934 (the 1934 Act), and thereby subject to regulation by the Securities and Exchange Commission (SEC), (ii) effected on an automated trading system (as defined in Section IV(i) below) operated by a broker-dealer independent of JPMorgan that is subject to regulation

by the SEC, or an automated trading system operated by a recognized U.S. securities exchange (as defined in Section IV(j) below), which, in either case, provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer, or (iii) effected on a recognized securities exchange (as defined in Section IV(j) below), so long as the broker is acting on an agency basis.

(e) No transactions by a Fund involve purchases from, or sales to, JPMorgan (including officers, directors, or employees thereof), or any party in interest that is a fiduciary with discretion to invest plan assets into the Fund (unless the transaction by the Fund with such party in interest would otherwise be subject to an exemption); however, this condition would not apply to purchases or sales on an exchange or through an automated trading system (described in paragraph (d) of this Section) on a blind basis where the identity of the counterparty is not known.

(f) No more than five (5) percent of the total amount of JPM Stock that is issued and outstanding at any time is held in the aggregate by Index and Model-Driven Funds managed by JPMorgan.

(g) JPM Stock constitutes no more than three (3) percent of any independent third party index on which the investments of an Index or Model-Driven Fund are based.

(h) A plan fiduciary which is independent of JPMorgan authorizes the investment of such plan's assets in an Index or Model-Driven Fund which purchases and/or holds JPM Stock, pursuant to the procedures described herein (see Paragraph 12 of the Summary of Facts and Representations, below, regarding portfolio management services provided for particular plans).

(i) A fiduciary independent of JPMorgan directs the voting of the JPM Stock held by an Index or Model-Driven Fund on any matter in which shareholders of JPM Stock are required or permitted to vote.

Section II—Prospective Exemption for the Acquisition, Holding, and Disposition of JPMorgan Chase & Co. Stock

If the proposed exemption is granted, the restrictions of sections 406(a)(1)(D), 406(b)(1) and 406(b)(2) of the Act, and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(D) and (E) of the Code, shall not apply, as of the date this proposed exemption is granted, to the acquisition, holding, and disposition of JPM Stock by Index and Model-Driven Funds managed by JPMorgan, provided that the following conditions and the general conditions in Section III are satisfied:

(a) The acquisition or disposition of JPM Stock is for the sole purpose of maintaining strict quantitative conformity with the relevant index upon which the Index or Model-Driven Fund is based.

(b) The acquisition or disposition of JPM Stock does not involve any agreement, arrangement or understanding regarding the design or operation of the Fund acquiring the JPM Stock which is intended to benefit JPMorgan or any party in which JPMorgan may have an interest.

(c) All purchases of JPM Stock pursuant to a Buy-up (as defined in Section IV(d)) occur in the following manner:

(1) Purchases on a single trading day are from, or through, only one broker or dealer;

(2) Based on the best available information, purchases are not the opening transaction for the trading day;

(3) Purchases are not effected in the last half hour before the scheduled close of the trading day;

(4) Purchases are at a price that is not higher than the lowest current independent offer quotation, determined on the basis of reasonable inquiry from brokers that are not affiliates of JPMorgan (as defined in section IV(g));

(5) Aggregate daily purchases of JPM Stock by the Funds do not exceed, on any particular day, the greater of: (i) Fifteen (15) percent of the aggregate average daily trading volume for the security occurring on the applicable exchange and automated trading system for the previous five business days, or (ii) fifteen (15) percent of the trading volume for the security occurring on the applicable exchange and automated trading system on the date of the transaction, as determined by the best available information for the trades occurring on that date;

(6) All purchases and sales of JPM Stock occur either (i) on a recognized securities exchange (as defined in Section IV(j) below), (ii) through an automated trading system (as defined in Section IV(i) below) operated by a broker-dealer independent of JPMorgan that is registered under the 1934 Act, and thereby subject to regulation by the SEC, which provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer, or (iii) through an automated trading system (as defined in Section IV(i) below) that is operated by a recognized securities exchange (as defined in Section IV(j) below), pursuant to the applicable securities laws, and provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer; and

(7) If the necessary number of shares of JPM Stock cannot be acquired within 10 business days from the date of the event that causes the particular Fund to require JPM Stock, JPMorgan appoints a fiduciary that is independent of JPMorgan to design acquisition procedures and monitor JPMorgan's compliance with such procedures, in accordance with Representation 7 in the Summary of Facts and Representations.

(d) For transactions subsequent to a Buy-up, all aggregate daily purchases of JPM Stock by the Funds do not exceed, on any particular day, the greater of:

(1) Fifteen (15) percent of the aggregate average daily trading volume for the JPM Stock occurring on the applicable exchange and automated trading system for the previous five (5) business days, or

(2) Fifteen (15) percent of the trading volume for JPM Stock occurring on the applicable exchange and automated trading system on the date of the transaction, as determined by the best available information for the trades that occurred on such date.

(e) All transactions in JPM Stock not otherwise described in paragraph (c) above are either: (i) Entered into on a principal basis in a direct, arms-length transaction with a broker-dealer, in the ordinary course of its business, where such broker-dealer is independent of JPMorgan and is registered under the 1934 Act, and thereby subject to regulation by the SEC, (ii) effected on an automated trading system (as defined in Section IV(i) below) operated by a broker-dealer independent of JPMorgan that is subject to regulation by the SEC, or an automated trading system operated by a recognized securities exchange (as defined in Section IV(j) below), which, in either case, provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer, or (iii) effected through a recognized securities exchange (as defined in Section IV(j) below), so long as the broker is acting on an agency basis.

(f) No transactions by a Fund involve purchases from, or sales to, JPMorgan (including officers, directors, or employees thereof), or any party in interest that is a fiduciary with discretion to invest plan assets in the Fund (unless the transaction by the Fund with such party in interest would

otherwise be subject to an exemption); however, this condition would not apply to purchases or sales on an exchange or through an automated trading system (described in paragraphs (c) and (e) of this Section) on a blind basis where the identity of the counterparty is not known.

(g) No more than five (5) percent of the total amount of JPM Stock that is issued and outstanding at any time is held in the aggregate by Index and Model-Driven Funds managed by JPMorgan.

(h) JPM Stock constitutes no more than five (5) percent of any independent third party index on which the investments of an Index or Model-Driven Fund are based.

(i) A plan fiduciary independent of JPMorgan authorizes the investment of such plan's assets in an Index or Model-Driven Fund which purchases and/or holds JPM Stock, pursuant to the procedures described herein (see Paragraph 12 of the Summary of Facts and Representations below regarding portfolio management services provided for particular plans).

(j) A fiduciary independent of JPMorgan directs the voting of the JPM Stock held by an Index or Model-Driven Fund on any matter in which shareholders of JPM Stock are required or permitted to vote.

Section III—General Conditions

(a) JPMorgan maintains or causes to be maintained, for a period of six years from the date of the transaction, the records necessary to enable the persons described in paragraph (b) of this Section to determine whether the conditions of this exemption have been met, except that (1) a prohibited transaction will not be considered to have occurred if, solely due to circumstances beyond the control of JPMorgan, the records are lost or destroyed prior to the end of the six-year period, and (2) no party in interest other than JPMorgan shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (b) below.

(b)(1) Except as provided in paragraph (b)(2) and notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (a) of this Section are unconditionally available at their customary location for examination during normal business hours by —

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service or the Securities and Exchange Commission,

(B) Any fiduciary of a plan participating in an Index or Model-Driven Fund who has authority to acquire or dispose of the interests of the plan, or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer to any plan participating in an Index or Model-Driven Fund or any duly authorized employee or representative of such employer, and

(D) Any participant or beneficiary of any plan participating in an Index or Model-Driven Fund, or a representative of such participant or beneficiary.

(2) None of the persons described in subparagraphs (B) through (D) of this paragraph (b) shall be authorized to examine trade secrets of JPMorgan or commercial or financial information that is considered confidential.

Section IV—Definitions

(a) The term ''Index Fund'' means any investment fund, account, or portfolio sponsored, maintained, trusteed, or managed by JPMorgan, in which one or more investors invest, and—

(1) That is designed to track the rate of return, risk profile, and other characteristics of an independently maintained securities Index, as described in Section IV(c) below, by either (i) replicating the same combination of securities that comprise such Index, or (ii) sampling the securities that comprise such Index based on objective criteria and data;

(2) For which JPMorgan does not use its discretion, or data within its control, to affect the identity or amount of securities to be purchased or sold;

(3) That contains ''plan assets'' subject to the Act; and,

(4) That involves no agreement, arrangement, or understanding regarding the design or operation of the Fund which is intended to benefit JPMorgan or any party in which JPMorgan may have an interest.

(b) The term ''Model-Driven Fund'' means any investment fund, account, or portfolio sponsored, maintained, trusteed, or managed by JPMorgan, in which one or more investors invest, and—

(1) That is composed of securities, the identity of which and the amount of which are selected by a computer model that is based on prescribed objective criteria using independent third party data, not within the control of JPMorgan, to transform an independently maintained Index, as described in Section IV(c) below;

(2) That contains ''plan assets'' subject to the Act; and

(3) That involves no agreement, arrangement, or understanding regarding the design or operation of the Fund or the utilization of any specific objective criteria that is intended to benefit JPMorgan or any party in which JPMorgan may have an interest.

(c) The term ''Index'' means a securities index that represents the investment performance of a specific segment of the public market for equity or debt securities in the United States and/or foreign countries, but only if —

(1) The organization creating and maintaining the index is—

(A) Engaged in the business of providing financial information, evaluation, advice or securities brokerage services to institutional clients,

(B) A publisher of financial news or information, or

(C) A public stock exchange or association of securities dealers; and,

(2) The index is created and maintained by an organization independent of JPMorgan; and,

(3) The index is a generally accepted standardized index of securities that is not specifically tailored for the use of JPMorgan.

(d) The term ''Buy-up'' means an initial acquisition of JPM Stock by an Index or Model-Driven Fund which is necessary to bring the Fund's holdings of such stock either to its capitalization-weighted or other specified composition in the relevant index, as determined by the independent organization maintaining such index, or to its correct weighting as determined by the model which has been used to transform the index.

(e) The term ''JPMorgan'' refers to Bank One Investment Advisors Corporation (BOIA) and J.P. Morgan Investment Management Inc. (JPMIM), and their respective Affiliates, as defined in paragraph (f) below.

(f) The term ''Affiliate'' means, with respect to BOIA or JPMIM, an entity which, directly or indirectly, through one or more intermediaries, is controlling, controlled by, or under common control with BOIA or JPMIM;

(g) An ''affiliate'' of a person includes:

(1) Any person, directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with the person;

(2) Any officer, director, employee or relative of such person, or partner of any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(h) The term ''control'' means the power to exercise a controlling influence over the management or

policies of a person other than an individual.

(i) The term ''automated trading system'' means an electronic trading system that functions in a manner intended to simulate a securities exchange by electronically matching orders on an agency basis from multiple buyers and sellers, such as an ''alternative trading system'' within the meaning of the SEC's Reg. ATS [17 CFR 242.300], as such definition may be amended from time to time, or an ''automated quotation system'' as described in Section 3(a)(51)(A)(ii) of the 1934 Act [15 U.S.C. 78c(a)(51)(A)(ii)].

(j) The term ''recognized securities exchange'' means a U.S. securities exchange that is registered as a ''national securities exchange'' under Section 6 of the 1934 Act (15 U.S.C. 78f), as such definition may be amended from time to time, which performs with respect to securities the functions commonly performed by a stock exchange within the meaning of definitions under the applicable securities laws (e.g., 17 CFR 240.3b–16).

(k) The term ''Fund'' means an Index Fund (as described in Section IV(a)) or a Model-Driven Fund (as described in IV(b)).

Summary of Facts and Representations

1. On January 14, 2004, Bank One Corporation (Bank One), a publicly traded bank holding company, and J.P. Morgan Chase & Co. (JPMC), a publicly traded bank holding company, entered into an agreement to effect a merger of the assets and business operations of the two financial institutions (the Merger). The Merger became effective on July 1, 2004, on which date each share of Bank One common stock was exchanged for 1.32 shares of the common stock of JPMC. The combined company is known as JPMorgan Chase & Co. (also referred to herein as JPMC) and continues its corporate existence under Delaware law. The common stock of JPMC trades on the New York Stock exchange under the trading symbol ''JPM.''

With assets of approximately $1.1 trillion and operations in more than 50 countries, JPMC is a leader in investment banking, financial services for consumers and businesses, financial transaction processing, asset and wealth management, and private equity. The headquarters for JPMC is located in New York.

JPMC is internally organized for management reporting purposes into six major lines of business: (i) Asset & Wealth Management; (ii) Card Services; (iii) Commercial Banking; (iv) Investment Banking; (v) Retail Financial Services; and (vi) Treasury & Securities Services. Only the first line of business is relevant to the Applicants' exemption request.

Banc One Investment Advisors Corporation (BOIA) is an investment adviser registered under the Investment Advisers Act of 1940 (the Advisers Act). BOIA acts as an investment manager to employee benefit plans subject to the fiduciary responsibility provisions of ERISA, as well as governmental plans and other trusts or funds that are exempt from taxation under section 501(a) of the Code.

J.P. Morgan Investment Management, Inc. (JPMIM) is an investment adviser registered under the Advisers Act that manages assets for a wide range of institutional and private clients around the globe. As of December 31, 2005, JPMIM managed approximately $1.19 trillion in assets for defined benefit and defined contribution plans, endowments and foundations, and other institutional clients, mutual funds, and high net worth individuals.

Effective as of the date of the Merger, BOIA and JPMIM are both wholly owned subsidiaries of JPMC. BOIA, JPMIM and their Affiliates that are now or may, in the future, be engaged in providing asset management services to ERISA-covered plans are collectively referred to as ''JPMorgan.''

2. Prior to January 14, 2004, BOIA maintained and managed Index and Model-Driven Funds which held assets of ERISA-covered employee benefit plans. The Applicants represent that, as a result of the Merger, an individual exemption for the acquisition, holding, and disposition of common stock of JPMC (i.e., JPM Stock) is necessary to enable certain Index and Model-Driven Funds managed by JPMorgan (formerly managed by BOIA) to acquire, hold, and dispose of JPM Stock. In this regard, there have been Funds that, since January 14, 2004, have acquired, held, and/or disposed of JPM Stock. The Applicants request a retroactive exemption, effective as of January 14, 2004 to the date that this proposed exemption is granted, to permit such transactions by these Funds. The Applicants are not requesting any retroactive relief for any pre-Merger acquisition, holding or disposition of the common stock of Bank One.

3. The Applicants represent that they provide investment advisory and management services to ERISA-covered plans through separately managed accounts and through collective investment vehicles. The Applicants' investment management services include indexed, quantitative, and structured investment strategies. In addition to ERISA-covered plans, the Applicants' clients include retirement plans with non-U.S. participants, governmental entities, governmental plans, church plans, endowments and foundations, mutual funds, and other institutional investors.

4. In its capacity as fiduciary of an employee benefit plan, each of the Applicants is appointed by an independent plan fiduciary. The Applicants represent that their discretionary authority over whether the plan invests in particular Funds is restricted by guidelines adopted by an independent plan fiduciary, unless the plan subscribes to the Applicants' portfolio management in Funds (PMF) services (as discussed below).

5. The Applicants request that Index and Model-Driven Funds be permitted to invest in JPM Stock if such Stock is included among the securities listed in the index utilized by the Fund. The Applicants represent that indices that include JPM Stock include the S&P 500 Index and the Russell 1000 Value Index, among others. These indices are compiled by financial information agencies, such as Standard & Poor's and Frank Russell. These agencies are engaged in the provision of financial information or securities brokerage services to institutional investors and/or are publishers of financial information. In each instance, the indices are compiled by organizations that are independent of JPMorgan and are generally accepted standardized indices of securities that are not tailored for the use of JPMorgan. While many of these indices are not currently utilized by JPMorgan for its Index and Model-Driven Funds, there is a possibility that Funds holding assets of ERISA-covered plans will be established in the future that are based on these indices.

The Applicants represent that there were at least seven (7) different Index Funds maintained by Bank One that included JPM Stock in their portfolios, as of January 14, 2004. These Funds were all separately managed accounts that invest in either an S&P 500 or Russell 1000 Value Index strategy.

6. The Applicants state that the proposed exemption is desirable to allow Funds holding ''plan assets'' to purchase and hold JPM Stock in order to replicate the capitalization-weighted or other specified composition of JPM Stock in an independently maintained third party index [9] used by an Index

[9] According to the Applicants, various methods other than capitalization-weighting that may be used to determine the composition of JPM Stock in

Continued

Fund or to achieve the desired transformation of an index used to create a portfolio for a Model-Driven Fund.[10] In addition, the Applicants represent that there will be instances, once this proposed exemption is granted, when JPM Stock will be added to an index on which a Fund is based or will be added to the portfolio of a Fund which seeks to track an index that includes such Stock.[11] In such instances, acquisitions of JPM Stock will be necessary to bring the Fund's holdings of such Stock either to its capitalization-weighted or other specified composition in the index, as determined by the independent organization maintaining such index, or to the correct weighting for such Stock as determined by the computer model that has been used to transform the index. If the Index or Model-Driven Fund holds ''plan assets,'' the Applicants represent that all acquisitions of JPM Stock by such Fund will comply with the ''Buy-up'' conditions contained in Section II(c) of this proposed exemption.[12]

7. In the case of a Buy-up, if the necessary number of shares of JPM Stock cannot be acquired within 10 days from the date of the event that causes the particular Fund to require JPM Stock, JPMorgan will appoint a fiduciary that is independent of JPMorgan to design acquisition procedures and monitor JPMorgan's compliance with such procedures.[13] The independent fiduciary and its principals will be completely independent from the Applicants. The independent fiduciary will also be experienced in developing and operating investment strategies for individual and collective investment vehicles that track third party indices. Furthermore, the independent fiduciary will not act as the broker for any purchases or sales of JPM Stock and will not receive any commissions as a result of this initial acquisition program.

The independent fiduciary will have as its primary goal the development of trading procedures that minimize the market impact of purchases made pursuant to the initial acquisition program by the Funds. The Applicants would expect that, under the trading procedures established by the independent fiduciary, the trading activities will be conducted in a low-profile, mechanical, non-discretionary manner and would involve a number of small purchases over the course of each day, randomly timed. The Applicants further expect that such a program will allow the Applicants to acquire the necessary shares of JPM Stock for the Funds with minimum impact on the market and in a manner that will be in the best interests of any employee benefit plans that participate in such Funds.

The independent fiduciary will also be required to monitor the Applicants' compliance with the trading program and procedures developed for the initial acquisition of JPM Stock. During the course of any initial acquisition program, the independent fiduciary will be required to review the activities weekly to determine compliance with the trading procedures and notify the Applicants should any non-compliance be detected. Should the trading procedures need modifications due to unforeseen events or consequences, the independent fiduciary will be required to consult with the Applicants and must approve in advance any alteration of the trading procedures.

8. Subsequent to initial acquisitions pursuant to a Buy-up, all aggregate daily purchases of JPM Stock by the Funds will not exceed, on any particular day, the greater of:

(i) Fifteen (15) percent of the average daily trading volume for the JPM Stock occurring on the applicable exchange and automated trading system (as described herein)[14] for the previous five (5) business days, or

(ii) Fifteen (15) percent of the trading volume for JPM Stock occurring on the applicable exchange and automated trading system (as described herein) on the date of the transaction, as determined by the best available information for the trades that occurred on such date.

9. JPMorgan represents that, as of January 14, 2004, until the date this proposed exemption is granted, all purchases and sales of JPM Stock by the Funds have occurred and will continue to occur in one of the following ways: (i) Through a direct, arms-length transaction entered into on a principal basis with a broker-dealer[15] that is independent of JPMorgan and is registered under the 1934 Act, and thereby subject to regulation by the SEC; (ii) through an automated trading system (as defined in Section IV(i) above) operated by a broker-dealer independent of JPMorgan that is registered under the 1934 Act, and thereby subject to regulation by the SEC, or an automated trading system operated by a recognized securities

an index are as follows: (i) An index may weigh each of the securities that comprise the index equally, regardless of the relative capitalization of the issuer; (ii) an index might use share weighting, where the weighting of each stock is determined based on the total number of shares of each issuer available on the market; and (iii) in price weighting, the weighting of each stock is based on the price of the stocks in the index, a stock with a higher price will have a greater weight in the index than a stock with a lower price. The Dow Jones Industrial Average is an example of a price weighted index.

[10] The Applicants are not requesting any relief from sections 406 or 407(a) of the Act in connection with the acquisition and holding of JPM Stock by any employee benefit plans established and maintained by JPMorgan for its own employees that invest in the Applicants' Index Funds. In this regard, the Applicants represent that such transactions may be covered by the statutory exemption under section 408(e) of the Act, if the conditions of that exemption are met. However, the Department expresses no opinion in this proposed exemption as to whether the conditions of section 408(e) of the act have been or will be met.

[11] The Applicants represent that the inclusion or exclusion of JPM Stock from an index and the weighting or changes to the weighting of JPM Stock in an index are based on data, criteria, and methodology determined by the organization that creates and maintains the index, which cannot be varied by JPMorgan. Changes in the weighting of JPM Stock in a Fund would occur when there is a change in factors underlying the applicable weighting methodology. Changes in index weightings are, for the most part, triggered by corporate actions (buying back shares, issuing more shares or acquiring another company for stock).

[12] The Applicants anticipate that, generally, acquisitions of JPM Stock by an Index or Model-Driven Fund in a ''Buy-up'' will occur within 10 business days from the date of the event that causes the particular Fund to require the addition of JPM Stock. The Applicants do not anticipate that the amounts of JPM Stock acquired by any Fund in a ''Buy-up'' will be significant. In this regard, the Department notes that the conditions required herein are designed to minimize the market impact of purchases made by the Funds in any ''Buy-up'' of JPM Stock.

[13] In this regard, all Funds holding JPM Stock, as of January 14, 2004, that have continued to acquire, hold, and dispose of JPM Stock in order to track indices including JPM Stock will not need to have daily transactions involving such Stock directed by an independent fiduciary. The Applicants state that the amount of JPM Stock involved in such transactions has been and continues to be determined by the independent organization that created and maintains the relevant index, and all other conditions required under this proposed exemption have been met.

[14] The Department notes that the Act's fiduciary responsibility provisions would apply to the manager's selection of a trading venue, including an automated trading system, to effect purchases and sales of JPM Stock on behalf of its managed Index and Model-Driven Funds.

[15] The Department notes that no relief is provided herein for purchases and sales of securities between a Fund and a broker-dealer, acting as a principal, which may be considered prohibited transactions as a result of such broker-dealer being a party in interest, under section 3(14) of the Act, with respect to any plans that are investors in the Fund. However, such transactions may be covered by one or more of the Department's existing class exemptions. For example, PTE 84–14 (49 FR 9497, March 13, 1984, as amended 70 FR 49305 (Aug. 23 2005)) permits, under certain conditions, parties in interest to engage in various transactions with plans whose assets are invested in an investment fund managed by a ''qualified professional asset manager'' (QPAM) who is independent of the parties in interest (with certain limited exceptions) and meets specified financial standards. The Department expresses no opinion as to whether any of its class exemptions would provide relief in this circumstance.

exchange (as defined in Section IV(j) above), which, in either case, provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer; or (iii) through a recognized securities exchange as defined in Section IV(j) above so long as the broker is acting on an agency basis.

In addition, JPMorgan states that as of the date this proposed exemption is granted, all future transactions by the Funds involving JPM Stock which do not occur in connection with a Buy-up of such Stock by a Fund, as described above, will be either: (i) Entered into on a principal basis with a broker-dealer that is registered under the 1934 Act, and thereby subject to regulation by the SEC; (ii) effected on an automated trading system (as defined in Section IV(i) above) operated by a broker-dealer independent of JPMorgan subject to regulation by the SEC, or on an automated trading system operated by a recognized securities exchange (as defined in Section IV(j) above) which, in either case, provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer; or (iii) effected through a recognized securities exchange (as defined in Section IV(j) above), so long as the broker is acting on an agency basis.[16]

10. With respect to all acquisitions and dispositions of JPM Stock by the Funds since January 14, 2004, the Applicants state that no such transactions have involved purchases from or sales to JPMorgan (including officers, directors, or employees thereof), or any party in interest that is a fiduciary with discretion to invest plan assets in the Fund (except for purchases or sales on an exchange or through an automated trading system on a blind basis where the identity of the counterparty is not known). The Applicants represent that all future acquisitions and dispositions of JPM Stock by any Index or Model-Driven Funds maintained by JPMorgan also will not involve any purchases from or sales to JPMorgan (including officers, directors, or employees thereof), or any party in interest that is a fiduciary with discretion to invest plan assets in the Fund (unless the transaction by the Fund with such party in interest would otherwise be subject to an exemption), other than certain blind trades.[17]

11. The Applicants state that no more than five (5) percent of the total amount of JPM Stock that is issued and outstanding at the time, will be held in the aggregate by Index and Model-Driven Funds managed by JPMorgan.

For purposes of the acquisition and holding of JPM Stock by Funds from January 14, 2004 until the date this proposed exemption is granted, such Stock will constitute no more than three (3) percent of any independent third party index on which the investments of an Index or Model-Driven Fund are based. For example, as of March 31, 2008, JPM Stock represents 1.27% of the S&P 500 Index and 2.31% of the Russell 1000 Value Index. Although some indices may include JPM Stock in percentages that exceed three (3) percent of the index, JPMorgan does not currently utilize such indices for its Index and Model-Driven Funds with ''plan assets'' subject to the Act.

For purposes of future acquisitions and holdings of JPM Stock by such Funds, if this proposed exemption is granted, JPM Stock will constitute no more than five (5) percent of any independent third party index on which the investments of an Index or Model-Driven Fund are based.

With respect to an index's specified composition of particular stocks in its portfolio, the Applicants state that future Funds may track an index where the appropriate weighting for stocks listed in the index is not capitalization-weighted. Thus, the Applicants state that Funds maintained by JPMorgan and affiliates of JPMC may track indices where the selection of a particular stock by the index, and the amount of stock to be included in the index, is not established based on the market capitalization of the corporation issuing such stock. Therefore, since an independent organization may choose to create an index where there are other index weightings for stocks comprising the index, the Applicants request that the proposed exemption allow for JPM Stock to be acquired by a Fund in the amounts that are specified by the particular index, subject to the other restrictions imposed by this proposed exemption. The Applicants represent that, in all instances, acquisitions or dispositions of JPM Stock by a Fund will be for the sole purpose of maintaining strict quantitative conformity with the relevant index upon which the Fund is based or, in the case of a Model-Driven Fund, a modified version of such an index as created by a computer model based on prescribed objective criteria and third party data.[18]

12. The Applicants state that plan fiduciaries independent of JPMorgan have authorized and will continue to authorize the investment of any plan's assets in an Index or Model-Driven Fund that purchases and/or holds JPM Stock.

With respect to transactions involving JPM Stock, the Applicants state that they may provide portfolio management services (i.e., PMF services) to a particular plan (a PMF Plan). In this regard, the Applicants may exercise some discretion in allocating and reallocating the plan's assets among various funds, including Index or Model-Driven Funds that may hold JPM Stock. These allocations are based on a plan's investment objectives, risk profile, and market conditions. However, the Applicants make the following representations with respect to the purchase, directly or indirectly, of JPM Stock by such plans:

(a) The Applicants represent that any prohibited transactions that might occur as a result of the discretionary allocation and reallocation of plan assets among collective investment funds will be exempt from the prohibitions of section 406 of the Act by reason of section 408(b)(8).[19]

(b) Before JPM Stock is purchased by a Fund, the appropriate independent fiduciary for each PMF Plan that is currently invested, or could be invested, in such Fund will be furnished an explanation and a simple form to return to JPMorgan for the purpose of indicating either approval or disapproval of investments in the Fund

[16] PTE 86–128 (51 FR 41686, November 18, 1986) provides a class exemption, under certain conditions, permitting persons who serve as fiduciaries for employee benefit plans to effect or execute securities transactions on behalf of such plans. The Department expresses no opinion as to whether the conditions of this exemption would be satisfied.

[17] As set forth in Section II(e), the condition would not apply to purchases or sales on an exchange or through an automated trading system on a blind basis where the identity of the counterparty is not known.

[18] The Applicants represent that JPMorgan does not currently manage any Model-Driven Funds, but, consistent with prior similar exemption (e.g., see PTE 2000–30 (65 FR 37165, June 13, 2000) granted to Barclays Bank PLC), JPMorgan would like to retain the flexibility to do so in the future in reliance on this exemption, if granted. A Model-Driven Fund would be composed of securities the identity of which and the amount of which are selected by a computer model that is based upon prescribed objective criteria using independent third party data, not within the control of JPMorgan, to transform an independently maintained index. In managing a Model Driven Fund that includes JPM Stock, JPMorgan would maintain the weightings of JPM Stock in strict quantitative conformity with the weightings determined by the computer model.

[19] The Department expresses no opinion in this proposed exemption as to whether the Applicants' discretionary allocation and reallocation services for any collective investment funds maintained by the Applicants satisfy the requirements of section 408(b)(8) of the Act and is not proposing any exemptive relief beyond that offered by section 408(b)(8) for such transactions.

including JPM Stock, together with a postage-paid return envelope. If the form is not returned to the Applicants, the Applicants may obtain a verbal response by telephone. If a verbal response is obtained by telephone, the Applicants will confirm the fiduciary's decision in writing within five (5) business days. In the event that no response is obtained from a plan fiduciary, the assets of the plan will not be invested in any Fund that invests in JPM Stock and any plan assets currently invested in such Fund at that time will be withdrawn.

(c) Each new management agreement with such a plan will contain language specifically approving or disapproving the investment in any Fund which holds or might hold JPM Stock. The fiduciary for each such plan will be informed that the existing management agreement could be modified in the same way. However, if the fiduciary does not specifically approve language in the agreement allowing the investment of plan assets in Funds which hold or might hold JPM Stock, then no such investment will be made by the Applicants.

(d) Each such plan will be informed on a quarterly basis of any investment in, or withdrawal from, any Fund holding JPM Stock. On an annual basis, the plan will be notified of its right to terminate the Applicants' discretionary authority to invest in or withdraw from such Funds. If the plan terminates the Applicants' authority to invest in or withdraw from the Funds, then the Applicants will effect the plan's withdrawal from the Funds as soon as reasonably practicable after being notified of such termination.

13. The Applicants will appoint an independent fiduciary that will direct the voting of JPM Stock held by the Funds. Currently, the independent fiduciary that directs the voting of JPM Stock held by the Funds is Institutional Shareholder Services, Inc.[20]

JPMorgan states that in all instances the independent fiduciary chosen to vote JPM Stock for the Funds will be a consulting firm specializing in corporate governance issues and proxy voting on behalf of institutional investors with large equity portfolios. The fiduciary will develop and follow standard guidelines and procedures for the voting of proxies by institutional fiduciaries. The Applicants will provide the independent fiduciary with all necessary information regarding the Funds that hold JPM Stock, the amount of JPM Stock held by the Funds on the record date for shareholder meetings of the Applicants, and all proxy and consent materials with respect to JPM Stock. The independent fiduciary will maintain records with respect to its activities as an independent fiduciary on behalf of the Funds, including the number of shares of JPM Stock voted, the manner in which they were voted, and the rationale for the vote. The independent fiduciary will supply the Applicants with such information after each shareholder meeting. The independent fiduciary will be required to acknowledge that it will be acting as a fiduciary with respect to the plans that invest in the Funds that own JPM Stock, when voting such Stock.

14. In summary, with respect to all past acquisitions, holdings, and dispositions of JPM Stock by the Funds since January 14, 2004, the Applicants represent that such transactions meet the criteria of section 408(a) of the Act for the following reasons:

(a) Each Index or Model-Driven Fund involved is based on an Index, as defined in Section IV(c) above;

(b) The acquisition, holding, and disposition of the JPM Stock by the Index or Model-Driven Fund is for the sole purpose of maintaining strict quantitative conformity with the relevant index upon which the Fund is based, and does not involve any agreement, arrangement, or understanding regarding the design or operation of the Fund acquiring the JPM Stock that is intended to benefit JPMorgan or any party in which JPMorgan may have an interest;

(c) All aggregate daily purchases of JPM Stock by the Funds do not exceed, on any particular day, the greater of: fifteen (15) percent of the aggregate average daily trading volume for such Stock occurring on the applicable exchange and automated trading system for the previous five (5) business days, or fifteen (15) percent of the trading volume for the Stock occurring on the applicable exchange and automated trading system on the date of the transaction, both as determined by the best available information for the trades occurring on that date or dates;

(d) All purchases and sales of JPM Stock occur either (i) on a principal basis in a direct, arms-length transaction with a broker-dealer, in the ordinary course of its business, where such broker-dealer is independent of JPMorgan and is registered under the 1934 Act, and thereby subject to regulation by the SEC, (ii) effected on an automated trading system operated by a broker-dealer independent of JPMorgan that is subject to regulation by the SEC, or an automated trading system operated by a recognized securities exchange, which, in either case, provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer, or (iii) effected through a recognized securities exchange, so long as the broker is acting on an agency basis.

(e) No transactions by a Fund involve purchases from or sales to JPMorgan (including officers, directors, or employees thereof), or any party in interest that is a fiduciary with discretion to invest plan assets into the Fund (unless the transaction by the Fund with such party in interest would otherwise be subject to an exemption); however, this condition would not apply to purchases or sales on an exchange or through an automated trading system on a blind basis where the identity of the counterparty is not known;

(f) No more than five (5) percent of the total amount of JPM Stock issued and outstanding at any time is held in the aggregate by Index and Model-Driven Funds managed by JPMorgan;

(g) JPM Stock constitutes no more than three (3) percent of any independent third party index on which the investments of an Index or Model-Driven Fund are based;

(h) A plan fiduciary independent of JPMorgan authorizes the investment of such plan's assets in an Index or Model-Driven Fund which purchases and/or holds JPM Stock; and

(i) A fiduciary independent of JPMorgan directs the voting of the JPM Stock held by an Index or Model-Driven Fund on any matter in which shareholders of JPM Stock are required or permitted to vote.

With respect to all prospective acquisitions, holdings, and dispositions of JPM Stock by the Funds after this proposed exemption is granted, the Applicants represent that such transactions will meet the criteria of section 408(a) of the Act for the following reasons:

(a) Each Index or Model-Driven Fund involved will be based on an Index, as defined in Section IV(c) above;

(b) The acquisition or disposition of JPM Stock will be for the sole purpose of maintaining strict quantitative conformity with the relevant Index upon which the Index or Model-Driven Fund is based, and will not involve any agreement, arrangement, or understanding regarding the design or operation of the Fund acquiring the JPM

[20] See 29 CFR 2509.94–2—Interpretive bulletin relating to written statements of investment policy, including proxy voting policy or guidelines. The Department further notes that the Act's general standards of fiduciary conduct also would apply to the selection of a service provider specializing in proxy voting.

Stock that is intended to benefit JPMorgan or any party in which JPMorgan may have an interest;

(c) Whenever JPM Stock is initially added to an index on which a Fund is based, or initially added to the portfolio of a Fund (*i.e.*, a Buy-up), all acquisitions of JPM Stock necessary to bring the Fund's holdings of such Stock either to its capitalization-weighted or other specified composition in the relevant index, as determined by the independent organization maintaining such index, or to its correct weighting as determined by the computer model that has been used to transform the index, will be restricted by conditions that are designed to prevent possible market price manipulations;

(d) Subsequent to acquisitions necessary to bring a Fund's holdings of JPM Stock to its specified weighting in the index or model, pursuant to the restrictions noted in paragraph (c) above, all aggregate daily purchases of JPM Stock by the Funds will not exceed, on any particular day, the greater of: fifteen (15) percent of the aggregate average daily trading volume for such Stock occurring on the applicable exchange and automated trading system for the previous five (5) business days, or fifteen (15) percent of the trading volume for the Stock occurring on the applicable exchange and automated trading system on the date of the transaction, both as determined by the best available information for the trades that occurred on such date or dates;

(e) All transactions in JPM Stock, other than acquisitions of such Stock in a Buy-up described in paragraph (c) above, will be either: (i) Entered into on a principal basis with a broker-dealer, in the ordinary course of its business, where such broker-dealer is independent of JPMorgan and is registered under the 1934 Act, and thereby subject to regulation by the SEC, (ii) effected on an automated trading system operated by a broker-dealer independent of JPMorgan subject to regulation by the SEC, or by a recognized securities exchange which, in either case, provides a mechanism for customer orders to be matched on an anonymous basis without the participation of a broker-dealer, or (iii) effected through a recognized securities exchange (as defined herein), so long as the broker is acting on an agency basis;

(f) No transactions by a Fund will involve purchases from or sales to JPMorgan (including officers, directors, or employees thereof), or any party in interest that is a fiduciary with discretion to invest plan assets into the Fund (unless the transaction by the Fund with such party in interest would otherwise be subject to an exemption); however, this condition would not apply to purchases or sales on an exchange or through an automated trading system on a blind basis where the identity of the counterparty is not known;

(g) No more than five (5) percent of the total amount of JPM Stock that is issued and outstanding at any time, will be held in the aggregate by Index and Model-Driven Funds managed by JPMorgan;

(h) JPM Stock will constitute no more than five (5) percent of any independent third party index on which the investments of an Index or Model-Driven Fund are based;

(i) A plan fiduciary independent of JPMorgan will authorize the investment of such plan's assets in an Index or Model-Driven Fund that purchases and/or holds JPM Stock pursuant to the procedures described herein, including those which relate to portfolio management services provided to certain plans (see Item 12 of the Summary of Facts and Representations above); and

(k) A fiduciary independent of JPMorgan will direct the voting of the JPM Stock held by an Index or Model-Driven Fund on any matter in which shareholders of JPM Stock are required or permitted to vote.

Notice to Interested Persons

Notice of the proposed exemption shall be mailed by first class mail to interested persons, including the appropriate independent fiduciaries for employee benefit plans currently invested in the Index and/or Model-Driven Funds that acquire and hold JPM Stock. The notice shall contain a copy of the proposed exemption as published in the **Federal Register** and an explanation of the rights of interested parties to comment, or request a hearing, regarding the proposed exemption. All notices should be sent to interested persons within 15 days of the publication of this proposed exemption in the **Federal Register**. Any written comments and/or requests for a hearing must be received by the Department from interested persons within 45 days of the publication of this proposed exemption in the **Federal Register**.

In addition, if this exemption is granted, JPMorgan shall provide a copy of the proposed exemption and a copy of the final exemption upon request to all ERISA-covered plans that invest in any Index or Model-Driven Fund that will include JPM Stock in its portfolio after the date the final exemption is published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Karen Lloyd of the Department, telephone (202) 693–8554. (This is not a toll-free number.)

Pileco, Inc. Employees Profit Sharing Plan (the Plan) Located in Houston, Texas

[Application No. D–11449]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale of certain unimproved real property (the Property) by the Plan to Pileco, Inc. (Pileco or the Applicant), the sponsor of the Plan, and a party in interest with respect to the Plan, provided that the following conditions are satisfied:

(a) The sale is a one-time transaction for cash;

(b) At the time of the sale, the Plan receives the greater of either: (1) $280,000; or (2) the fair market value of the Property as established by a qualified, independent appraiser in an updated appraisal of such Property;

(c) The Plan pays no fees, commissions or other expenses associated with the sale;

(d) The terms and conditions of the sale are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated third party; and

(e) The Plan trustee (1) Determines, among other things, whether it is in the best interest of the Plan to proceed with the sale of the Property; (2) reviews and approves the methodology used in the appraisal that is being relied upon; and (3) ensures that such methodology is applied by the qualified independent appraiser in determining the fair market value of the Property on the date of the sale.

Summary of Facts and Representations

1. The Plan is a defined contribution profit sharing plan without a 401(k) feature. The Plan was effective as of October 1, 1974, and was most recently restated effective May 8, 2004. As of September 30, 2006, the Plan had a total of 27 participants, and approximately $2.99 million in total assets. The Plan's current trustee is Mr. Otto Kammerer,

who is also the Chairman of the Board of Directors of Pileco, as well as the Plan participant with the largest account balance. As of September 30, 2006, Mr. Kammerer's Plan account comprised approximately 28% (or $837,200) of the Plan's total assets.

2. Pileco, which maintains its principal place of business in Houston, Texas, is primarily involved in the engineering, fabrication, sale, rental, and servicing of diesel pile hammers. Pileco is a wholly-owned subsidiary of Bauer Mashinen, GmbH (Bauer), a corporation organized under the laws of the Federal Republic of Germany. Bauer is a multinational firm, headquartered in Schrobenhausen, Germany, that specializes in engineering, construction, and heavy equipment manufacturing.

3. On March 26, 1980, the Plan purchased the Property from Richard and Christine Levinge, unrelated third parties, for $77,912.15. The consideration was paid in cash. The Property is a vacant and unimproved 69,670 square foot parcel of land (consisting of 1.5994 acres) located east of Madie Drive, and north of Berry Road in Houston, Texas (Harris County). The Property is adjacent to other unimproved property that is owned by Pileco. Mr. Kammerer, as the Plan trustee, made the original decision to purchase the Property as a long-term growth investment for the Plan.[21] Since the time of acquisition, the Property has not been an income-producing asset. Mr. Kammerer represents that all holding costs that have been incurred with respect to the Property since its acquisition in 1980, including, but not limited to: Property taxes, liability insurance premiums, and expenses associated with securing the premises, have been paid in full by Pileco.

4. The Property was originally appraised on September 22, 2006, by Stephen M. LaGrasta, MAI, who is an independent, state-certified real estate appraiser in the State of Texas. Mr. LaGrasta is a principal in the real estate appraisal firm of Yates-LaGrasta, Inc. of Houston, Texas. In an appraisal report dated October 2, 2006, Mr. LaGrasta valued the Property using the Sales Comparison Approach. Mr. LaGrasta compared the Property to five other properties sold within close proximity to the Property between January 2005 and September 2006. He adjusted the sale price of the comparable properties based upon sales date, location, size and shape. Mr. LaGrasta determined that the fair market value of the Property was $140,000 as of September 22, 2006.

In his original appraisal, Mr. LaGrasta did not attribute any special benefit to the value of the Property from Pileco's ownership of the adjacent property due to a number of factors, including: (a) A large amount of undeveloped land that is available in the area for purchase; (b) the comparatively larger size of Pileco's neighboring land in comparison to the size of the Property; (c) the less desirable location of the Property in relation to Pileco's neighboring land; and (d) the Property's lack of significant street frontage or other qualities that make it attractive for purposes of commercial development. Therefore, Mr. LaGrasta did not include any premium for assemblage value.[22]

5. An updated appraisal of the Property was prepared by Mr. LaGrasta on January 21, 2008, and it reflects the current market conditions. The Property was again valued using the Sales Comparison Approach. Mr. LaGrasta compared the Property to three other similar properties sold within close proximity to the Property since March 2007. He adjusted the sales price of the comparable properties based upon the sales date, location, size and shape. Mr. LaGrasta determined that the fair market value of the Property was $270,000 as of January 21, 2008. Based on its current appraised value, the Property currently represents approximately 9% of the Plan's assets.

In the updated appraisal report, Mr. LaGrasta again stated that the subject Property does not enhance the value of the property currently owned by Pileco. He determined that the payment by Pileco of an adjacency premium for the Property is not supported because: (a) The Pileco tract has extensive frontage in its current configuration; (b) there is other land available in the mixed use area and scarcity would not be an issue; (c) the Pileco property is not hampered by size, visibility and street frontage; and (d) the Pileco-owned property can be easily developed without the addition of the subject Property. Further, Mr. LaGrasta pointed out that the addition of the Property would tend to lower the per square foot value of the combined tract due to doubling in size. Also, Mr. LaGrasta noted that the combined tract would still be irregularly-shaped, which could hamper development and make the site less functional.

6. The Applicant requests an individual exemption from the Department in order to purchase the Property from the Plan. The Applicant represents that the Property is being sold as part of a change in control in which 100% of the capital stock of Pileco was acquired on October 7, 2005 by Bauer, which was then unaffiliated with the pre-October 7, 2005 shareholders of Pileco. The Board of Directors of Pileco has approved the complete freeze and termination of the Plan coincident with the closing of such an acquisition. In connection with the termination of the Plan, an application will be filed with the Internal Revenue Service for a favorable determination regarding the Plan's status as a qualified plan. Once such determination is received, the Plan will be liquidated and all account balances under the Plan will be distributed. Thus, the proposed transaction is motivated, in part, by a need to increase the Plan's liquidity in anticipation of the distribution of participants' account balances.

7. It is also represented that the Plan has made efforts to sell the Property to unrelated third parties. To this end, the Plan listed the Property on the open market for a number of years at a listing price of $4.00 per square foot ($278,680). However, this listing price was not based on a professional appraisal of the Property. During the listing period, the Plan did not receive any offers from third-party purchasers to purchase the Property.

8. The Plan will pay no real estate commissions or other expenses associated with the sale. Pileco will pay the Plan in cash, the greater of either: (a) $280,000;[23] or (b) the fair market value of the Property, as established by a qualified, independent appraiser on the date of the transaction, as reflected in an updated appraisal of such Property.[24] Further, the parties will enter into a real estate contract to evidence the proposed sale transaction.

9. As the Plan trustee, Mr. Kammerer, will determine, among other things, whether it is in the best interest of the Plan to go forward with the sale of the Property. In addition, Mr. Kammerer will review and approve the

[21] The Plan once owned another parcel of property that was adjacent to the subject Property. This property was sold to Pileco for $152,678, pursuant to the Department's expedited exemption procedure (See E–00521; FAN 2006–12E, June 8, 2006).

[22] ''Assemblage'' value reflects the willingness of a purchaser to pay above market value for a parcel of property in order to preserve such purchaser's interest in their present holdings of other parcels which are adjacent to such property.

[23] Pileco proposes to pay the appraised fair market value of the Property of $270,000, plus $10,000 which would be paid in full, in cash, at a closing to be held within thirty (30) days of the publication in the **Federal Register** of the notice granting the final exemption.

[24] The Applicant represents that, to the best of its knowledge, to the extent the amount paid by Pileco for the Property exceeds its fair market value, such excess amount (if treated as an employer contribution) will not cause the annual additions to the Plan to exceed the limitations prescribed by section 415 of the Code.

methodology used in the appraisal that is being relied upon, and he will ensure that such methodology is applied by a qualified independent appraiser in determining the fair market value of the Property on the date of the sale.

10. In summary, it is represented that the proposed transaction will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The proposed sale will be a one-time transaction for cash;

(b) The Plan will receive the greater of either:

(i) $280,000; or (ii) the fair market value for the Property, as established on the date of the sale by an independent, qualified appraiser in an updated appraisal of such Property;

(c) The Plan will pay no fees, commissions or other expenses associated with the sale;

(d) The terms and conditions of the sale will be at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated third party; and

(e) The Plan trustee: (i) Will determine, among other things, whether it is in the best interest of the Plan to proceed with the sale of the Property; (ii) will review and approve the methodology used in the appraisal that is being relied upon; and (iii) will ensure that such methodology is applied by the qualified independent appraiser in determining the fair market value of the Property on the date of the sale.

Tax Consequences of the Proposed Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan either paying less than or receiving more than fair market value, such excess may be considered to be a contribution by the sponsoring employer to the plan and, therefore, must be examined under applicable provisions of the Internal Revenue Code, including sections 401(a)(4), 404 and 415.

FOR FURTHER INFORMATION CONTACT: Blessed Chuksorji-Keefe of the Department at (202) 693–8567. (This is not a toll-free number).

Mellon Bank N.A. (Mellon)

Located in Pittsburgh, Pennsylvania.

[Application No. D–11460]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code, in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

If the proposed exemption is granted, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply as of January 18, 2008, to the cash sale of certain medium term notes (the Notes) for $28,584,601.46 by the EB Daily Liquidity Money Market Fund (the Fund) to The Bank of New York Mellon Corporation (BNYMC), a party in interest with respect to employee benefit plans invested in the Fund, provided that the following conditions are met.

(a) The sale was a one-time transaction for cash payment made on a delivery versus payment basis in the amount described in paragraph (b);

(b) The Fund received an amount as of the settlement date of the sale which was equal to the greatest of:

(i) The amortized cost of the Notes as of the date of the sale, if the Fund has been valued at amortized cost at any time within the preceding year;

(ii) The price at which the Fund purchased the Notes, if the Fund is valued at fair market value and the Fund has not been valued at amortized cost at any time within the preceding year; or

(iii) The fair market value of the Notes as of the date of the sale, as determined by an independent third party source or independent appraisal (in each case, including accrued but unpaid interest);

(c) The Fund did not bear any commissions or transaction costs with respect to the sale;

(d) Mellon, as trustee of the Fund, determined that the sale of the Notes was appropriate for and in the best interests of the Fund, and the employee benefit plans invested, directly or indirectly, in the Fund, at the time of the transaction;

(e) Mellon took all appropriate actions necessary to safeguard the interests of the Fund, and the employee benefit plans invested in the Fund, in connection with the transactions;

(f) If the exercise of any of BNYMC's rights, claims or causes of action in connection with its ownership of the Notes results in BNYMC recovering from the issuer of the Notes, or any third party, an aggregate amount that is more than the sum of:

(i) The purchase price paid for the Notes by BNYMC (i.e., $28.5 million); and

(ii) The interest due on the Notes from and after the date BNYMC purchased the Notes from the Fund, at the rate specified in the Notes, BNYMC will refund such excess amounts promptly to the Fund (after deducting all reasonable expenses incurred in connection with the recovery).

(g) Mellon and its affiliates, as applicable, maintain, or cause to be maintained, for a period of six (6) years from the date of any covered transaction such records as are necessary to enable the persons described below in paragraph (h)(i), to determine whether the conditions of this exemption have been met, except that—

(i) No party in interest with respect to a plan which engages in the covered transactions, other than Mellon and its affiliates, as applicable, shall be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975(a) and (b) of the Code, if such records are not maintained, or not available for examination, as required, below, by paragraph (h)(i); and

(ii) A separate prohibited transaction shall not be considered to have occurred solely because due to circumstances beyond the control of Mellon or its affiliate, as applicable, such records are lost or destroyed prior to the end of the six-year period.

(h)(i) Except as provided, below, in paragraph (h)(ii), and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to, above, in paragraph (g) are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or the SEC; or

(B) Any fiduciary of any plan that engages in the covered transactions, or any duly authorized employee or representative of such fiduciary; or

(C) Any employer of participants and beneficiaries and any employee organization whose members are covered by a plan that engages in the covered transactions, or any authorized employee or representative of these entities; or

(D) Any participant or beneficiary of a plan that engages in the covered transactions, or duly authorized employee or representative of such participant or beneficiary;

(ii) None of the persons described, above, in paragraph (h)(i)(B)—

(D) Shall be authorized to examine trade secrets of Mellon, or commercial or financial information which is privileged or confidential; and

(iii) Should Mellon refuse to disclose information on the basis that such information is exempt from disclosure, Mellon shall, by the close of the thirtieth (30th) day following the

request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

Summary of Facts and Representations

1. Mellon Bank, N.A. (Mellon) is a subsidiary of The Bank of New York Mellon Corporation (BNYMC), a Delaware financial services company that provides a wide range of banking and fiduciary services to a broad array of clients, including employee benefit plans subject to the Act. The Fund is a collective investment fund established and maintained by Mellon, as trustee, for the collective investment and reinvestment of assets contributed thereto by Mellon and its affiliates on behalf of their employee benefit plan clients. The Fund is a group trust that is exempt from federal income tax pursuant to Rev. Rul. 81–100. As of January 7, 2008, the value of the Fund's portfolio (including the Notes) was approximately $1.39 billion. As of such date, there were 25 direct investors in the Fund, including 21 other collective investment funds maintained by Mellon, three employee benefit plans subject to the Act (including the Mellon 401(k) Retirement Savings Plan) and one government plan.

2. The Fund is a short-term investment fund (''STIF'') that is utilized as (i) a short-term investment vehicle for the uninvested cash held by other Mellon collective investment funds and individual employee benefit plan clients of Mellon and its affiliates, and (ii) as an investment option for 401(k) plan clients. As of January 7, 2008, the Fund's dollar-weighted average duration/days to reset was 30.7 days. The Fund's stated investment objective provides that the Fund is to achieve a high level of current income consistent with stability of principal and liquidity. The assets of the Fund are invested in a diversified portfolio of investment grade money market instruments including, without limitation, commercial paper (including paper issued under Section 3(a)(3), Section 4(2) and Rule 144A of the Securities Act of 1933), the Mellon EB Temporary Investment Fund, notes, repurchase agreements and other evidences of indebtedness which are payable on demand or which have a maturity date not exceeding 13 months from date of purchase, except for floating rate securities, which may have a final maturity of up to two years from date of purchase. The Fund maintains a dollar-weighted average portfolio maturity of 90 days or less. Consistent with the foregoing, the Fund utilizes so-called amortized cost accounting (similar to a money market mutual fund) with the result that units of the Fund are generally valued at a constant amount equal to $1.00. The Fund's net income (including any accretion of discounts or amortization of premiums) is accrued daily and additional units are issued to reflect such net income.

3. The Fund purchased the Notes on January 27, 2007, for $28.5 million. The Notes were two year bonds with a par value of $28.5 million, issued by Stanfield Victoria Finance Ltd. (the Issuer) on March 24, 2006, with a maturity date of March 27, 2008. Interest on the Notes was taxable and payable quarterly at a variable rate which was reset each quarter based upon the three-month London Interbank Offered Rate (LIBOR). The principal amount and unpaid interest on the Notes were payable at maturity.

4. The Issuer is a so-called structured investment vehicle (SIV) that raised capital primarily by issuing various types and classes of notes, including the Notes. The capital raised was then utilized by the Issuer to purchase various financial assets, including other asset-backed securities and mortgage-backed securities. The assets acquired by the Issuer were pledged to secure payment of certain of the notes issued by the Issuer, including the Notes, pursuant to a security agreement with an independent bank serving as collateral agent. This security agreement provided that, as a general rule, upon the occurrence of an ''Enforcement Event,'' as defined in the agreement, the collateral agent was required to sell all of the Issuer's assets and distribute the proceeds thereof.

5. The decision to invest Fund assets in the Notes was made by Mellon as trustee of the Fund. Prior to the investment, Mellon conducted an investigation of the potential investment, examining and considering the economic and other terms of the Notes. Mellon represents that the Fund's investment in the Notes was consistent with the Fund's investment policies and objectives. At the time the Fund acquired the Notes, the Notes were rated ''AAA'' by Standard & Poor's Corporation (''S&P'') and ''Aaa'' by Moody's Investor Services, Inc. (''Moody's''). Based on its consideration of the relevant facts and circumstances, Mellon states that it was prudent and appropriate for the Fund to acquire the Notes.[25]

6. On November 7, 2007, S&P placed a ''negative watch'' on the Notes. On December 21, 2007, Moody's downgraded the rating of the Notes to ''Baa3.'' On January 7, 2008, S&P downgraded the rating of the Notes to ''B-.'' Responding to these events, Mellon, on behalf of the Fund, executed an amendment to the security agreement governing the Notes on January 7, 2008. Pursuant to this amendment, by providing notice (Election Notice) on or before January 17, 2008, Mellon could elect to have the pro-rata share of the collateral assets allocable the Notes held by the Fund excluded from any asset sale by the collateral agent that would otherwise occur immediately upon the occurrence of an Enforcement Event. On January 8, 2008, as a result of the foregoing ratings down-grades, an Enforcement Event occurred. On January 10, 2008, the Issuer did not repay certain notes maturing on that date. On January 14, 2008, Mellon submitted an Election Notice to the collateral agent instructing the collateral agent to exclude the Fund's pro rata share of the Issuer's assets from the asset sale triggered by the occurrence of the Enforcement Event on January 8, 2008. On January 15, 2008, Moody's further downgraded its rating of the Notes to ''B2.'' On January 17, 2008, S&P further downgraded its rating of the Notes to ''D.''

7. Mellon's election was based on Mellon's determination that the market for the collateral assets securing the Notes was severely distressed and that the inherent value of such assets was substantially greater than the price that could have been obtained if such assets were sold currently by the collateral agent. Accordingly, Mellon determined that it was in the best interest of the Fund to exclude such assets from a current sale.

8. While the units of the Fund are generally valued at $1.00, Mellon, as Trustee of the Fund, obtains market prices for all of the Fund's assets to confirm that the fair market value of such assets is substantially consistent with the constant $1.00 value being utilized in the operation of the Fund. Mellon utilizes an unrelated entity, Interactive Data Corporation (IDC), as a pricing service for this purpose. On January 11, 2008, IDC reported the price of the Notes as being 99.0501 percent of their par value. Mellon questioned the IDC price in light of the facts discussed in paragraph 6 above and the fact that Credit Suisse First Boston had indicated that the Notes were trading at distressed levels. IDC announced on January 11, 2008 that, effective January 15, 2008, it would no longer price the Notes in view

[25] The Department is expressing no opinion in this proposed exemption regarding whether the acquisition and holding of the Notes by the Fund violated any of the fiduciary responsibility provisions of Part 4 of Title I of the Act.

of the occurrence of an Enforcement Event and ''the lack of current bid and other verifiable market and/or credit information pertaining'' to the Notes. As a result of the events described in paragraph 6, an independent analysis of the Notes prepared by Gifford Fong Associates (GFA) was obtained on January 11, 2008. The analysis estimated the value of the Notes, as of January 10, 2008, at 91 percent of their par value. GFA's determination of the value of the Notes was based upon its analysis and evaluation of the underlying assets of the Issuer relating to the Notes.

9. In view of the foregoing, Mellon determined that it would be appropriate and in the best interest of the Fund for the Notes to be sold by the Fund for their par value plus accrued interest. Mellon also determined that the purchase of the Notes by BNYMC would be permissible under applicable banking law. Therefore, in order to protect the Fund and the participating investors having an interest in the Fund from potential investment losses, Mellon determined that a sale of the Notes by the Fund to BNYMC at a price equal to the par value of the Notes plus accrued interest would be in the best interest of the Fund and all of its participating investors. On January 17, 2008, notice of this determination was provided to a representative of each of the 25 investors having a direct interest in the Fund.

10. On January 18, 2008, BNYMC purchased the Notes from the Fund for a lump sum cash payment of $28,584,601.46. This sum represented the par value of the Notes (i.e. $28.5 million) plus the accrued interest owing on the Notes (i.e. $84,601.46) as of January 17, 2008. Mellon represents that this amount equals the amortized cost of the Notes plus accrued but unpaid interest.

11. As noted in paragraph 8, prior to the consummation of the transaction, valuations of the Notes were obtained on January 11, 2008 (seven days prior to the sale) from an independent pricing service, GFA, in addition to the most recent price available from IDC. GFA's valuation of the Notes reflected its estimation of the value of the Notes as of January 10, 2008. Mellon states that GFA is a highly-regarded independent valuation firm with respect to the pricing of securities such as the Notes. As noted in paragraph 8 above, the valuation of the Notes obtained from GFA was 91 percent of their par value. Moreover, Mellon had obtained information from an independent broker-dealer that the market for the Notes was in extreme distress with prices for any actual trades being substantially below the GFA value. On the basis of this information, Mellon determined that the purchase price paid by BNYMC to the Fund exceeded the aggregate fair market value of the Notes as of the date of the transaction.

12. Mellon, as trustee of the Fund, believed that the sale of the Notes to BNYMC was in the best interests of the Fund, and the employee benefit plans invested in the Fund, at the time of the transaction. Mellon states that any sale of the Notes on the open market would have produced significant losses for the Fund and for the participating investors in the Fund. Mellon represents that the sale of the Notes by the Fund to BNYMC benefited the participating investors in the Fund by placing such investors in the same economic position they would have occupied absent the deterioration in the value of the Notes due to their rating downgrades, the occurrence of an Enforcement Event and the general disruption in the relevant markets. The participating investors in the Fund benefited further because the purchase price paid by BNYMC for the Notes substantially exceeded the aggregate fair market value of the Notes, as determined by GFA.

In addition, Mellon states that the transaction was a one-time sale for cash in connection with which the Fund did not bear any brokerage commissions, fees, or other expenses. Mellon represents that it took all appropriate actions necessary to safeguard the interests of the Fund and its participating investors in connection with the sale of the Notes.

13. Mellon states that the sale of the Notes by the Fund to BNYMC resulted in an assignment of all of the Fund's rights, claims, and causes of action against the Issuer or any third party arising in connection with or out of the issuance of the Notes or the purchase of the Notes by the Fund. Mellon states further that if the exercise of any of the foregoing rights, claims or causes of action results in BNYMC recovering from the Issuer or any third party an aggregate amount that is more than the sum of (a) the purchase price paid for the Notes by BNYMC (i.e. $28.5 million); and (b) the interest due on the Notes from and after the date BNYMC purchased the Notes from the Fund, at the rate specified in the Notes, BNYMC will refund such excess amounts promptly to the Fund (after deducting all reasonable expenses incurred in connection with the recovery).

14. In summary, the applicant represents that the transaction satisfied the statutory criteria of section 408(a) of the Act and section 4975 of the Code because: (a) The sale of the Notes by the Fund was a one-time transaction for cash payment made on a delivery versus payment basis; (b) the Fund received an amount equal to the amortized cost of the Notes, plus accrued but unpaid interest, at the time of sale, which was greater than the aggregate fair market value of the Notes as determined by an independent pricing service and an independent valuation firm at the time of sale; (c) the Fund did not pay any commissions or other expenses with respect to the sale; (d) Mellon, as trustee of the Fund, determined that the sale of the Notes to BNYMC was in the best interests of the Fund, and the employee benefit plans invested, directly or indirectly, in the Fund, at the time of the transaction; (e) Mellon took all appropriate actions necessary to safeguard the interests of the Fund in connection with the transactions; and (f) BNYMC will promptly refund to the Fund any amounts recovered from the Issuer or any third party in connection with its exercise of any rights, claims or causes of action as a result of its ownership of the Notes, if such amounts are in excess of the sum of: (i) the purchase price paid for the Notes by BNYMC (i.e. $28.5 million) and (ii) the interest due on the Notes from and after the date BNYMC purchased the Notes from the Fund, at the rate specified in the Notes.

Notice to Interested Persons

Written notice will be provided to a representative of each of the 25 investors having a direct interest in the Fund. The notice shall contain a copy of the proposed exemption as published in the **Federal Register** and an explanation of the rights of interested parties to comment, or request a hearing, regarding the proposed exemption. Such notice will be provided by personal or express delivery within 15 days of the issuance of a proposed exemption. Any written comments and/or requests for a hearing must be received by the Department from interested persons within 45 days of the publication of this proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Karen Lloyd of the Department, telephone (202) 693–8554. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or

disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemption, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 1st day of July, 2008.

Ivan Strasfeld

Director of Exemption Determinations,

[FR Doc. E8–15320 Filed 7–7–08; 8:45 am]

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Federal Register

Tuesday,
July 8, 2008

Part IV

Securities and Exchange Commission

17 CFR Part 240

Exemption of Certain Foreign Brokers or Dealers; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–58047; File No. S7–16–08]

RIN 3235–AK15

Exemption of Certain Foreign Brokers or Dealers

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission (''Commission'' or ''SEC'') is proposing to amend a rule under the Securities Exchange Act of 1934 (''Exchange Act''), which provides conditional exemptions from broker-dealer registration for foreign entities engaged in certain activities involving certain U.S. investors. To reflect increasing internationalization in securities markets and advancements in technology and communication services, the proposed amendments would update and expand the scope of certain exemptions for foreign entities, consistent with the Commission's mission to protect investors, maintain fair, orderly and efficient markets and facilitate capital formation.

DATES: Comments should be received on or before September 8, 2008.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number S7–16–08 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov/*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–16–08. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. We will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/proposed.shtml*). Comments are also available for public 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; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Erik R. Sirri, Director, Marlon Quintanilla Paz, Senior Counsel to the Director, Brian A. Bussey, Assistant Chief Counsel, Matthew A. Daigler, Special Counsel, or Max Welsh, Attorney, Office of the Chief Counsel, Division of Trading and Markets, at (202) 551–5500, at the Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–6628.

SUPPLEMENTARY INFORMATION: The Commission is requesting public comment on the proposed amendments to Rule 15a–6 [17 CFR 240.15a–6] under the Exchange Act.

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I. Introduction and Background

Section 15(a) of the Exchange Act generally provides that, absent an exception or exemption, a broker or dealer that uses the mails or any means of interstate commerce to effect transactions in, or to induce or attempt to induce the purchase or sale of, any security must register with the Commission.[1] The Commission uses a territorial approach in applying the broker-dealer registration requirements to the international operations of broker-dealers.[2] Under this approach, broker-dealers located outside the United States that induce or attempt to induce securities transactions with persons in the United States are required to register with the Commission, unless an exemption applies.[3] Entities that conduct such activities entirely outside the United States do not have to register. Because this territorial approach applies on an entity level, not a branch level, if a foreign broker-dealer establishes a branch in the United States, broker-dealer registration requirements would extend to the entire foreign broker-dealer entity.[4] The registration requirements do not apply, however, to a foreign broker-dealer with an affiliate, such as a subsidiary, operating in the United States.[5] Only the U.S. affiliate must register and only the U.S. affiliate may engage in securities transactions and perform related functions on behalf of U.S. investors.[6] The territorial approach also requires registration of foreign broker-dealers operating outside the United States that effect, induce or attempt to induce securities transactions for any person inside the United States, other than a foreign person temporarily within the United States.[7]

In response to numerous inquiries seeking no-action relief and interpretive advice regarding whether certain international securities activities required U.S. broker-dealer registration, the Commission issued a release on June 14, 1988, to clarify the registration

[1] *See* 15 U.S.C. 78o(a)(1). Section 3(a)(4) of the Exchange Act generally defines a ''broker'' as ''any person engaged in the business of effecting transactions in securities for the account of others,'' but provides 11 exceptions for certain bank securities activities. Section 3(a)(5) of the Exchange Act generally defines a ''dealer'' as ''any person engaged in the business of buying and selling securities for his own account,'' but includes exceptions for certain bank activities. 15 U.S.C. 78c(a)(4). Exchange Act Section 3(a)(6) defines a ''bank'' as a bank or savings association that is directly supervised and examined by state or federal banking authorities (with certain additional requirements for banks and savings associations that are not chartered by a federal authority or a member of the Federal Reserve System). 15 U.S.C. 78c(a)(6). Accordingly, foreign banks that act as brokers or dealers within the jurisdiction of the United States are subject to U.S. broker-dealer registration requirements. *See* Exchange Act Release No. 27017 (Jul. 11, 1989), 54 FR 30013, 30015 n.16 (Jul. 18, 1989) (''1989 Adopting Release''); and Exchange Act Release No. 25801 (Jun. 14, 1988), 53 FR 23645 at n.1 (Jun. 23, 1988) (''1988 Proposing Release''). To the extent, however, that a foreign bank establishes a branch or agency in the United States that is supervised and examined by a federal or state banking authority and otherwise meets the requirements of Section 3(a)(6), the Commission considers that branch or agency to be a ''bank'' for purposes of the exceptions from the ''broker'' and ''dealer'' definitions. *See* 1989 Adopting Release, 54 FR at 30015 n.16.

[2] *See* 1989 Adopting Release, 54 FR at 30016.

[3] *See id.*

[4] *See id.* at 30017.

[5] *See id.*

[6] *See id.*

[7] *See id.* For contacts by foreign broker-dealers with U.S. citizens domiciled abroad, the Commission generally does not require registration. Paragraph (a)(4)(v) of Rule 15a–6 specifically addresses this situation.

requirements for foreign-based broker-dealers, foreign affiliates of U.S. broker-dealers, and other foreign financial institutions.[8] The release also proposed Rule 15a–6, which provided conditional exemptions from registration under Section 15(b) of the Exchange Act for foreign broker-dealers that induce or attempt to induce the purchase or sale of any security by certain U.S. institutional investors, if the foreign broker-dealer satisfied certain conditions. The Commission adopted Rule 15a–6 on July 11, 1989, and it became effective August 15, 1989.[9]

While the rule has provided a useful framework for certain U.S. investors to access foreign broker-dealers for almost two decades, ever increasing market globalization suggests that it is time to revisit that framework to consider whether it could be made more workable, consistent with the Commission's mission to protect investors, maintain fair, orderly and efficient markets and facilitate capital formation.

As discussed below, the amendments we propose today would generally expand the category of U.S. investors that foreign broker-dealers may contact for the purpose of providing research reports and soliciting securities transactions. The proposed amendments would also reduce the role U.S. registered broker-dealers must play in intermediating transactions effected by foreign broker-dealers on behalf of certain U.S. investors. Proposed new safeguards are intended to ensure that the expanded exemptions would remain consistent with the Commission's statutory mandate.

II. The Regulatory Framework Under Rule 15a–6

As discussed below, Rule 15a–6 provides conditional exemptions from broker-dealer registration for foreign broker-dealers that engage in certain activities involving certain U.S. investors. Paragraph (b)(3) of the rule defines a ''foreign broker-dealer'' as ''any non-U.S. resident person * * * that is not an office or branch of, or a natural person associated with, a registered broker-dealer, whose securities activities, if conducted in the United States, would be described by the definition of 'broker' or 'dealer' in Section 3(a)(4) or 3(a)(5) of the Act.'' [10] Among the activities that foreign broker-dealers may engage in under the rule are: (i) ''Nondirect'' contacts by foreign broker-dealers with U.S. investors through execution of unsolicited securities transactions and the provision of research reports to certain U.S. institutional investors and (ii) ''direct'' contacts, involving the execution of transactions through a registered broker-dealer intermediary with or for certain U.S. institutional investors, and without this intermediary with or for certain entities such as registered broker-dealers and banks acting in a broker or dealer capacity.[11]

A. Unsolicited Trades

As we explained in adopting Rule 15a–6, a broker-dealer that solicits a transaction with a U.S. investor must be registered with the Commission.[12] Because the Commission determined that, as a policy matter, registration is not necessary if a U.S. investor initiated a transaction with a foreign broker-dealer entirely by his or her own accord, paragraph (a)(1) of Rule 15a–6 [13] provides an exemption for a foreign-broker dealer that effects unsolicited securities transactions with U.S. persons.[14] As the Commission expressed in adopting Rule 15a–6, solicitation is construed broadly as ''any affirmative effort by a broker or dealer intended to induce transactional business for the broker-dealer or its affiliates.'' [15] For example, the Commission views telephone calls to U.S. investors, advertising circulated or broadcast in the United States and holding investment seminars in the United States, regardless of whether the seminars were hosted by a registered broker-dealer, as forms of solicitation.[16] Solicitation also includes recommending the purchase or sale of securities to customers or prospective customers for the purpose of generating transactions.[17]

The exemption in paragraph (a)(1) is intended to allow a foreign broker-dealer to effect transactions with U.S. investors when the foreign broker-dealer does not make any affirmative effort to induce transactional activity with the U.S. investor. Because of the breadth of the meaning of solicitation in the broker-dealer registration context, this exemption typically would not be a viable basis for a foreign broker-dealer to conduct an ongoing business, which would likely involve some form of solicitation, in the United States.[18]

B. Provision of Research Reports

The provision of research to investors also may constitute solicitation by a broker or dealer that would require broker-dealer registration.[19] Broker-dealers often provide research to customers with the expectation that the customer eventually will trade through the broker-dealer.[20] Paragraph (a)(2) of Rule 15a–6 [21] provides an exemption from U.S. broker-dealer registration for foreign broker-dealers that provide research reports to certain institutional investors under conditions that are designed to permit the flow of research without allowing foreign broker-dealers to do more to solicit transactions with U.S. investors.[22]

In particular, the rule exempts from U.S. broker-dealer registration a foreign broker-dealer that provides research to certain U.S. institutional investors if (i) the research reports do not recommend that the investor use the foreign broker-dealer to effect trades in any security, (ii) the foreign broker-dealer does not initiate follow up contacts or otherwise induce or attempt to induce investors to effect transactions in any security, (iii) transactions with the foreign broker-dealer in securities covered by the research reports are effected through a registered broker-dealer according to the provisions of paragraph (a)(3) of the rule, described below, and (iv) the provision of research is not pursuant to an understanding that the foreign broker-dealer will receive commission income from transactions effected by U.S. investors.[23]

The exemption in paragraph (a)(2) of Rule 15a–6 is available only with

[8] *See* 1988 Proposing Release.

[9] 17 CFR 240.15a–6. *See* 1989 Adopting Release.

[10] 17 CFR 240.15a–6(b)(3).

[11] *See* 1989 Adopting Release, 54 FR at 30013.

[12] *See id.* at 30017.

[13] 17 CFR 240.15a–6(a)(1).

[14] *See* 1989 Adopting Release, 54 FR at 30017.

[15] *See id.*

[16] *See id.* at 30017–18.

[17] *See id.*

[18] *See id.*; *see also* Exchange Act Release No. 39779, ''Interpretation Re: Use of Internet Web Sites To Offer Securities, Solicit Securities Transactions, or Advertise Investment Services Offshore'' (Mar. 23, 1998), 63 FR 14806, 14813 (Mar. 27, 1998) (stating that ''[f]oreign broker-dealers that have Internet Web sites and that intend to rely on Rule 15a–6's 'unsolicited' exemption should ensure that the 'unsolicited' customer's transactions are not in fact solicited, either directly or indirectly, through customers accessing their Web sites.'').

[19] *See* 1989 Adopting Release, 54 FR at 30021–22.

[20] *See id.* (''Broker-dealers often provide research to customers on a non-fee basis, with the expectation that the customer eventually will trade through the broker-dealer. They may provide research to acquaint potential customers with their existence, to maintain customer goodwill, or to inform customers of their knowledge of specific companies or markets, so that these customers will be encouraged to use their execution services for that company or those markets. In each instance, the basic purpose of providing the non-fee research is to generate transactional business for the broker-dealer. In the Commission's view, the deliberate transmission of information, opinions, or recommendations to investors in the United States, whether directed at individuals or groups, could result in the conclusion that the foreign broker-dealer has solicited those investors.'').

[21] 17 CFR 240.15a–6(a)(2).

[22] *See* 17 CFR 240.15a–6(a)(2).

[23] *See id.*

respect to research reports that are furnished to ''major U.S. institutional investors.'' Paragraph (b)(4) of the rule defines a ''major U.S. institutional investor'' as (i) a U.S. institutional investor [24] that has, or has under management, total assets in excess of $100 million (which may include the assets of any family of investment companies of which it is a part); or (ii) an investment adviser registered with the Commission under Section 203 of the Investment Advisers Act of 1940 that has total assets under management in excess of $100 million.[25]

C. Solicited Trades

As we discussed in adopting Rule 15a–6, although many foreign broker-dealers have established registered broker-dealer affiliates to deal with U.S. investors and trade in U.S. securities, they may prefer to deal with institutional investors in the United States from their overseas trading desks, where their dealer operations and principal sources of current information on foreign market conditions and foreign securities are based.[26] For similar reasons, many U.S. institutions want direct contact with overseas traders. Except for limited instances of unsolicited transactions, such contact would require the foreign broker-dealer to register with the Commission.

Paragraph (a)(3) of Rule 15a–6 [27] provides an exemption for foreign broker-dealers that induce or attempt to induce securities transactions by certain institutional investors, if a U.S. registered broker-dealer intermediates certain aspects of the transactions by carrying out specified functions. In particular, the U.S. registered broker-dealer is required to effect all aspects of the transaction (other than negotiation of the terms).[28] It must issue all required confirmations [29] and account statements to the U.S. institutional investor or major U.S. institutional investor. As the Commission explained, these documents are significant points of contact between the investor and the broker-dealer, and they provide important information for investors.[30] Also, as between the foreign broker-dealer and the U.S. registered broker-dealer, the latter is required to extend or arrange for the extension of any credit to these investors in connection with the purchase of securities.[31] In addition, the U.S. registered broker-dealer is responsible for maintaining required books and records relating to the transactions conducted under paragraph (a)(3) of the rule, including those required by Rules 17a–3 and 17a–4,[32] which facilitates Commission supervision and investigation of these transactions.[33] Of course, the U.S. registered broker-dealer also must maintain sufficient net capital in compliance with Exchange Act Rule 15c3–1,[34] and receive, deliver and safeguard funds and securities in connection with the transactions in compliance with Exchange Act Rule 15c3–3.[35] Furthermore, the U.S. registered broker-dealer must take responsibility for certain key sales activities, including ''chaperoning'' the contacts of foreign associated persons with certain U.S. institutional investors.[36]

In adopting Rule 15a–6, the Commission pointed out that the U.S. registered broker-dealer's intermediation is intended to help protect U.S. investors and securities markets.[37] For example, the U.S. registered broker-dealer has an obligation, as it has for all customer accounts, to review any Rule 15a–6(a)(3) account for indications of potential problems.[38]

This exemption in Rule 15a–6(a)(3) applies to transactions with major U.S. institutional investors, described above, as well as ''U.S. institutional investors.'' The rule defines a ''U.S. institutional investor'' as (i) an investment company registered with the Commission under Section 8 of the Investment Company Act of 1940; or (ii) a bank, savings and loan association, insurance company, business development company, small business investment company, or employee benefit plan defined in Rule 501(a)(1) of Regulation D under the Securities Act of 1933 (''Securities Act''); a private business development company defined in Rule 501(a)(2); an organization described in Section 501(c)(3) of the Internal Revenue Code, as defined in Rule 501(a)(3); or a trust defined in Rule 501(a)(7).[39]

D. Counterparties and Specific Customers

Paragraph (a)(4) of Rule 15a–6 [40] provides an exemption for foreign broker-dealers that effect transactions in securities with or for, or induce or attempt to induce the purchase or sale of securities by, five categories of persons: (1) Registered broker-dealers (acting either as principal or for the account of others) or banks acting pursuant to an exception or exemption from the definition of ''broker'' or ''dealer'' in Sections 3(a)(4)(B), 3(a)(4)(E), or 3(a)(5)(C) of the Exchange Act or the rules thereunder; [41] (2) certain international organizations and their agencies, affiliates and pension funds; [42]

[24] *See* Part II.C., *infra*, for discussion of the definition of ''U.S. institutional investor.''

[25] *See* 17 CFR 240.15a–6(b)(4); *cf.* Letter from Richard R. Lindsey, Director, Division of Market Regulation, to Mr. Giovanni P. Prezioso, Cleary Gottlieb, Steen & Hamilton (Apr. 9, 1997) (''1997 Staff Letter'').

[26] *See* 1989 Adopting Release, 54 FR at 30024.

[27] 17 CFR 240.15a–6(a)(3).

[28] 17 CFR 240.15a–6(a)(3)(iii)(A). In adopting Rule 15a–6, the Commission recognized that rules of foreign securities exchanges and over-the-counter markets may require the foreign broker-dealer, as a member or market maker, to perform the actual physical execution of transactions in foreign securities listed on those exchanges or traded in those markets. *See* 1989 Adopting Release, 54 FR at 30029 n.185. For this reason, the Commission stated that, while it does not believe that it is appropriate to allow the U.S. registered broker-dealer to delegate the performance of its duties under the rule to the foreign broker-dealer, it would permit such delegation in the case of physically executing foreign securities trades in foreign markets or on foreign exchanges. *See* 1989 Adopting Release, 54 FR at 30025; cf. 1997 Staff Letter. As a result, the treatment of U.S. securities and foreign securities under paragraph (a)(3) of the rule differs. Specifically, with foreign securities the foreign broker-dealer may not only negotiate the terms, but also execute the transactions in the circumstances specified in the Adopting Release. *See* 1989 Adopting Release, 54 FR at 30029 n.185; cf. NASD Rule 6620(g)(2) (trade reporting of transactions in foreign equity securities not required when the transaction is executed on and reported to a foreign securities exchange or over the counter in a foreign country and reported to the foreign regulator). With respect to U.S. securities, however, the U.S. broker-dealer is required to execute the transactions and to comply with the provisions of the federal securities laws, the rules thereunder and SRO rules applicable to the execution of transactions.

[29] *See* Rule 10b–10, 17 CFR 240.10b–10. *See* 17 CFR 240.15a–6(a)(3)(iii)(A)(2).

[30] *See* 1989 Adopting Release, 54 FR at 30029.

[31] 17 CFR 240.15a–6(a)(3)(iii)(A)(3).

[32] 17 CFR 240.17a–3 and 17a–4. *See* 17 CFR 240.15a–6(a)(3)(iii)(A)(4).

[33] *See* 1989 Adopting Release, 54 FR at 30029.

[34] 17 CFR 240.15c3–1. *See* 17 CFR 240.15a–6(a)(3)(iii)(A)(5).

[35] 17 CFR 240.15c3–3. *See* 17 CFR 240.15a–6(a)(3)(iii)(A)(6); cf. 1997 Staff Letter.

[36] *See* 17 CFR 240.15a–6(a)(3)(ii)(A) and (a)(3)(iii)(B); *cf.* 1997 Staff Letter.

[37] *See* 1989 Adopting Release, 54 FR at 30025.

[38] *See id.* While the rule does not require the U.S. registered broker-dealer to implement procedures to obtain positive assurance that the foreign broker-dealer is operating in accordance with U.S. requirements, the U.S. registered broker-dealer, in effecting trades arranged by the foreign broker-dealer, has a responsibility to review these trades for indications of possible violations of the federal securities laws. *Id.*

[39] *See* 17 CFR 240.15a–6(b)(7).

[40] 17 CFR 240.15a–6(a)(4).

[41] While the exemption allows foreign broker-dealers to effect transactions with or for certain banks or registered broker-dealers, it does not allow direct contact by foreign broker-dealers with the U.S. customers of the registered broker-dealers or banks. *See* 1989 Adopting Release, 54 FR at 30013 n.202.

[42] The organizations are the African Development Bank, the Asian Development Bank, the Inter-American Development Bank, the International Bank for Reconstruction and Development, the International Monetary Fund, the United Nations. *See* 17 CFR 240.15a–6(a)(4)(ii).

(3) foreign persons temporarily present in the United States with whom the foreign broker-dealer had a pre-existing relationship; (4) any agency or branch of a U.S. person permanently abroad; and (5) U.S. citizens resident outside the United States, as long as the transactions occur outside the United States and the foreign broker-dealer does not target solicitations at identifiable groups of U.S. citizens resident abroad.

III. Proposed Amendments to Rule 15a–6

The pace of internationalization in securities markets around the world has continued to accelerate since we adopted Rule 15a–6 in 1989. Advancements in technology and communication services have provided greater access to global securities markets for all types of investors.[43] U.S. investors are seeking to take advantage of this increased access by seeking more direct contact with those expert in foreign markets and foreign securities. In addition, discussions over the years with industry representatives regarding Rule 15a–6 have suggested areas where the rule could be revised to achieve its objectives more effectively without jeopardizing investor protections.[44]

In response to these developments and suggestions, the Commission is proposing to amend Rule 15a–6 to remove barriers to access while maintaining key investor protections. In general, and as discussed more fully in Part III.G. below, the proposed amendments would expand and streamline the conditions under which a foreign broker-dealer could operate without triggering the registration requirements of Section 15(a)(1) or 15B(a)(1) of the Exchange Act and the reporting and other requirements of the Exchange Act (other than Sections 15(b)(4) and 15(b)(6)), and the rules and regulations thereunder, that apply specifically to a broker-dealer that is not registered with the Commission solely by virtue of its status as a broker or dealer, while maintaining a regulatory structure designed to protect investors and the public interest.[45]

A. Extension of Rule 15a–6 to Qualified Investors

The proposed rule would expand the category of U.S. investors with which a foreign broker-dealer[46] could interact under Rule 15a–6(a)(2) and would expand, with a few exceptions, the category of U.S. investors with which a foreign broker-dealer could interact under Rule 15a–6(a)(3) by replacing the categories of ''major U.S. institutional investor'' and ''U.S. institutional investor'' with the category of ''qualified investor,'' as defined in Section 3(a)(54) of the Exchange Act.[47] In adopting the definitions of ''U.S. institutional investor'' and ''major U.S. institutional investor,'' the Commission expressed the view that institutions with the major U.S. institutional investor ''level of assets are more likely to have the skills and experience to assess independently the integrity and competence of the foreign broker-dealers providing [foreign market] access.''[48] As discussed below, we believe that advancements in communications and other technology have made it increasingly likely that a broader range of persons would have these skills and experience at a lower asset level.

The proposed rule would give the term ''qualified investor'' the same meaning as set forth in Section 3(a)(54) of the Exchange Act.[49] The qualified investor standard is well known to the financial community. Section 3(a)(54)(A) defines a ''qualified investor'' as:

(i) Any investment company registered with the Commission under Section 8 of the Investment Company Act of 1940 (''Investment Company Act'');

(ii) Any issuer eligible for an exclusion from the definition of investment company pursuant to Section 3(c)(7) of the Investment Company Act;

(iii) Any bank (as defined in Section 3(a)(6) of the Exchange Act), savings association (as defined in Section 3(b) of the Federal Deposit Insurance Act), broker, dealer, insurance company (as defined in Section 2(a)(13) of the Securities Act), or business development company (as defined in Section 2(a)(48) of the Investment Company Act);

(iv) Any small business investment company licensed by the United States Small Business Administration under Section 301(c) or (d) of the Small Business Investment Act of 1958;

(v) Any State sponsored employee benefit plan, or any other employee benefit plan, within the meaning of the Employee Retirement Income Security Act of 1974, other than an individual retirement account, if the investment decisions are made by a plan fiduciary, as defined in Section 3(21) of that Act, which is either a bank, savings and loan association, insurance company, or registered investment adviser;

(vi) Any trust whose purchases of securities are directed by a person described in clauses (i) through (v) above;

(vii) Any market intermediary exempt under Section 3(c)(2) of the Investment Company Act;

(viii) Any associated person of a broker or dealer other than a natural person;

(ix) Any foreign bank (as defined in Section 1(b)(7) of the International Banking Act of 1978);[50]

(x) The government of any foreign country;[51]

(xi) Any corporation, company, or partnership that owns and invests on a

[43] *See, e.g.,* Spotlight On: Roundtable Discussions Regarding Mutual Recognition (Jun. 12, 2007) (available at: *http://www.sec.gov/spotlight/mutualrecognition.htm).*

[44] *See, e.g., id.*

[45] *See* Part III.G., *infra*, regarding the scope of the exemption.

[46] The definition of ''foreign broker or dealer ''in the proposed rule would be the same as in the current rule, except as described below. *See* proposed Rule 15a–6(b)(2).

[47] The proposed rule would also eliminate the definition of ''family of investment companies,'' which is currently used in the definition of ''major U.S institutional investor, ''because it would no longer be needed. *See* 17 CFR 240.15a–6(b)(1), (4) and (7).

[48] 1989 Adopting Release, 54 FR at 30027. In proposing the definition of ''U.S. institutional investor,'' the Commission stated that ''[t]he proposed asset limitation in the rule is based on the assumption that direct U.S. oversight of the competence and conduct of foreign sales personnel may be of less significance where they are soliciting only U.S. institutional investors with high levels of assets. The $100 million asset level * * * is designed to increase the likelihood that the institution or its investment advisers have prior experience in foreign markets that provides insight into the reliability and reputation of various foreign broker-dealers.'' 1988 Proposing Release, 53 FR 23654.

[49] 15 U.S.C. 78c(54). The definition of ''qualified investor'' was added to the Exchange Act by the Gramm-Leach-Bliley-Act of 1999 (Pub. L. 106–102, 113 Stat. 1338 (1999)) and has application to several of the bank exceptions from broker-dealer registration, including: (1) the broker exception for identified banking products when the product is an equity swap agreement (Section 206(a)(6) of Pub. L. 106–102, 15 U.S.C. 78c note, as incorporated into Exchange Act Section 3(a)(4)(B)(ix), 15 U.S.C. 78c(a)(4)(B)(ix)); (2) the dealer exception for identified banking products when the product is an equity swap agreement (Section 206(a)(6) of Pub. L. 106–102, 15 U.S.C. 78c note, as incorporated into Exchange Act Section 3(a)(5)(C)(iv), 15 U.S.C. 78c(a)(5)(C)(iv)); and (3) the dealer exception for asset-backed securities (Exchange Act Section 3(a)(5)(C)(iii), 15 U.S.C. 78c(a)(5)(C)(iii)). These exceptions permit banks to sell certain securities to qualified investors without registering as broker-dealers with the Commission.

[50] The definition of qualified investor includes any foreign bank. Unlike foreign governments (*see* note 51, *infra*), foreign banks may establish a permanent presence in the United States, such as a branch, that would not qualify under Exchange Act Section 3(a)(6) as a bank. *See* note 1, *supra*. Foreign broker-dealers need to rely on Rule 15a–6 to effect transactions with such entities.

[51] Of course, foreign broker-dealers currently do not need to rely on Rule 15a–6 to effect transactions with foreign governments because foreign governments are neither located in the United States nor U.S. persons resident abroad.

discretionary basis not less than $25,000,000 in investments;

(xii) Any natural person who owns and invests on a discretionary basis not less than $25,000,000 in investments;

(xiii) Any government or political subdivision, agency, or instrumentality of a government that owns and invests on a discretionary basis not less than $50,000,000 in investments; or

(xiv) Any multinational or supranational entity or any agency or instrumentality thereof.

The Commission proposes to use the definition of ''qualified investor'' in section 3(a)(54) of the Exchange Act for several reasons primarily related to the sophistication and likely experience with foreign securities and foreign markets of the investors included in the definition. For example, the entities described in paragraphs (i) through (ix) of Section 3(a)(54)(A) of the Exchange Act, without limitation based on ownership or investment, are all engaged primarily in financial activities, including the business of investing. The persons in paragraphs (xi), (xii) and (xiii) of Section 3(a)(54)(A) are not primarily engaged in investing and may have limited investment experience. Thus, Congress established ownership and investment thresholds for those latter persons as indicators of investment experience and sophistication.[52] The Commission believes that Congress' standard for investors with significant investment experience and sophistication to deal with banks that are not registered as broker-dealers should ensure that these investors would possess sufficient experience with financial matters to be able to enter into securities transactions with foreign broker-dealers under the proposed exemption. Thus, the Commission believes that it would be appropriate and consistent with the protection of investors to extend the relief in proposed Rules 15a–6(a)(2) and (a)(3) to a corporation, company, partnership that, or a natural person who, owns and invests on a discretionary basis not less than $25,000,000 in investments, and to a government or political subdivision, agency or instrumentality of a government that owns and invests on a discretionary basis not less than $50,000,000 in investments.

The primary distinction between a major U.S. institutional investor and a qualified investor is the threshold value of assets or investments owned or invested and the inclusion of natural persons. As a result, under the proposed rule, the threshold would decline from institutional investors that own or control greater than $100 million in total assets to, among others, all investment companies registered with the Commission under Section 8 of the Investment Company Act and corporations, companies, or partnerships that own or invest on a discretionary basis $25 million or more in investments. In addition, under the proposed rule, natural persons who own or invest on a discretionary basis not less than $25,000,000 in investments would be included. In adopting Rule 15a–6, we explained that the $100 million asset level was designed ''to increase the likelihood that [the investor has] prior experience in foreign markets that provides insight into the reliability and reputation of various foreign broker-dealers.''[53] While we believe this is still the right focus, increased access to information about foreign securities markets due to advancements in communication technology suggest that a broader spectrum of investors are likely to have this type of sophistication.

We believe that the proposed use of the definition of qualified investor would more accurately encompass persons that have prior experience in foreign markets and an appropriate level of investment experience and sophistication overall. In certain instances, it would exclude persons that are currently included in the definition of U.S. institutional investor or major U.S. institutional investor. In each such instance, the proposed use of the definition of qualified investor would require greater investment experience of the entity than the current definition.

For example, with respect to employee benefit plans, the definition of qualified investor includes plans in which investment decisions are made by certain plan fiduciaries. The definition of U.S. institutional investor does not require a fiduciary to make investment decisions and encompasses plans with $5 million or more in assets. While there is no asset requirement in the employee benefit plan section in the definition of qualified investor, the Commission believes that proposing to require investment decisions to be made by plan fiduciaries as a qualification for the definition would help ensure a higher level of investing experience and sophistication than a $5 million asset threshold. Similarly, while a qualified investor applies to trusts whose purchases are directed by certain entities, the definition of ''U.S. institutional investor'' does not impose that limitation, but instead applies to certain trusts with $5 million or more in assets. Also, while the proposed definition (like the existing definition) would encompass business development companies as defined in Section 2(a)(48) of the Investment Company Act, the definition of ''U.S. institutional investor'' extends to private business development companies defined in Section 202(a)(22) of the Investment Advisers Act of 1940. The definition of ''U.S. institutional investor,'' unlike the definition of ''qualified investor,'' further applies to certain organizations described in Section 503(c) of the Internal Revenue Code with assets of $5 million or more. Proposing to require the higher level of investing experience and sophistication would be appropriate in light of the expanded activities in which foreign broker-dealers would be permitted to engage under the proposed rule, as well as the reduced role that would be played by the U.S. registered broker-dealer.

The Commission requests comment on the proposed use of the definition of ''qualified investor'' generally and, more specifically, whether allowing foreign broker-dealers to induce or attempt to induce transactions with the persons included in the proposed definition is appropriate. Are the ownership and investment thresholds applicable to certain persons included in the proposed use of the definition of ''qualified investor'' appropriate? Does the definition encompass investors that likely would have an appropriate level of investing or business experience in foreign markets? If not, why not? Should the definition be tailored to include only investors that have a demonstrated pattern of appropriate transactional activity with U.S. registered or foreign broker-dealers in foreign securities? If so, how?

The Commission also requests comment on whether the proposed use of the definition of ''qualified investor'' should include additional minimum asset levels for any of the persons included in Exchange Act Section 3(a)(54). For example, should the proposed rule use a new definition that includes a requirement that a small business investment company own and invest a certain amount of investments? Should it include any of the omitted

[52] *See* 15 U.S.C. 6801 *et seq.,* Pub. L. 106–102, 113 Stat. 1338 (1999). Congress did not include an ownership or investment threshold for multinational or supranational entities, or any agencies or instrumentalities thereof, presumably regarding such entities as possessing sufficient financial sophistication, net worth and knowledge and experience in financial matters to be considered a qualified investor. Exchange Act Release No. 47364 (Feb. 13, 2003), 68 FR 8686, 8693 (Feb. 24, 2003).

[53] *See* 1989 Adopting Release, 54 FR at 30027.

categories of persons from the definition of ''U.S. institutional investor''? Are there any categories of investors included in the proposed use of the definition of qualified investor that should be excluded, such as market intermediaries exempt under Section 3(c)(2) of the Investment Company Act?

In addition, the Commission requests comment on whether the proposed use of the definition of ''qualified investor'' should include natural persons who own or invest on a discretionary basis at least $25,000,000 in investments. If not, should the Commission adopt a different threshold level of investments or ownership? What criteria, if any, should apply to help ensure that a natural person would have sufficient investment experience and sophistication specifically in foreign securities? Are there additional safeguards for natural persons that would be appropriate to include in the rule, such as increasing the involvement of U.S. registered broker-dealers in transactions solicited by foreign broker-dealers? For example, foreign broker-dealers could be required to make suitability determinations before sales to natural persons under the exemption. If additional safeguards applied to transactions with natural persons who own or invest on a discretionary basis at least $25,000,000 in investments, would foreign broker-dealers choose to comply with those safeguards or choose not to do business directly with natural persons under such a rule? Finally, should any of the dollar thresholds in the proposed use of the definition of qualified investor be adjusted for inflation? If so, what mechanism should be used to make such adjustments?

B. Unsolicited Trades

As we noted in adopting Rule 15a–6, although the requirements of Section 15(a) under the Exchange Act do not distinguish between solicited and unsolicited transactions, the Commission does not believe, as a policy matter, that registration is necessary if U.S. investors have sought out foreign broker-dealers outside the United States and initiated transactions in foreign securities markets entirely of their own accord.[54] In that event, U.S. investors would have taken the initiative to trade outside the United States with foreign broker-dealers that are not conducting activities within this country and the U.S. investors would have little reason to expect these foreign broker-dealers to be subject to U.S. broker-dealer requirements.[55] Therefore, the Commission is not proposing to amend paragraph (a)(1) of the current rule, other than to add the title ''Unsolicited Trades.'' Notably, in order to rely on this exemption, foreign broker-dealers need to determine whether each transaction effected in reliance on it has been solicited under the proposed rule.

Because the Commission construes solicitation broadly and relatively few transactions qualify for the unsolicited exemption,[56] the Commission is proposing to provide further interpretive guidance related to solicitation under the proposed rule with respect to quotation systems. In adopting the current rule, we noted that access to foreign market makers' quotations is of considerable interest to registered broker-dealers and institutional investors that seek timely information on foreign market conditions.[57] The Commission also stated that it generally would not consider a solicitation to have occurred for purposes of Rule 15a–6 if there were a U.S. distribution of foreign broker-dealers' quotations by third-party systems, such as systems operated by foreign marketplaces or by private vendors, that distributed these quotations primarily in foreign countries.[58] The Commission's position applies only to third-party systems that do not allow securities transactions to be executed between the foreign broker-dealer and persons in the United States through the systems.[59] The Commission noted that it would have reservations about certain specialized quotation systems, which might constitute a more powerful inducement to effect trades because of the nature of the proposed transactions.[60] With respect to direct dissemination of a foreign market maker's quotations to U.S. investors, such as through a private quote system controlled by a foreign broker-dealer (as distinct from a third-party system), the Commission noted in adopting the current rule that such conduct would not be appropriate without registration, because the dissemination of these quotations would be a direct, exclusive inducement to trade with that foreign broker-dealer.[61]

Since the time the current rule was adopted, third-party quotation systems have become increasingly global in scope such that the distinction between systems that distribute quotations primarily in the United States and those that distribute quotations primarily in foreign countries is no longer a meaningful or workable distinction because most third-party quotation systems no longer serve a primary location.[62] As a result, under the Commission's proposed interpretation, the Commission's previous guidance on U.S. distribution of foreign broker-dealers' quotations by third-party systems no longer would be limited to third-party systems that distributed their quotations primarily in foreign countries under the proposed rule. In other words, under the proposed interpretation, U.S. distribution of foreign broker-dealers' quotations by a third-party system (which did not allow securities transaction to be executed between the foreign broker-dealer and persons in the U.S. through the system) would not be viewed as a form of solicitation, in the absence of other contacts with U.S. investors initiated by the third-party system or the foreign broker-dealer.

The Commission seeks comment regarding whether retaining the proposed Unsolicited Trades exemption in paragraph (a)(1) is appropriate. Are any modifications to this exemption necessary to reflect increasing internationalization in securities markets and advancements in technology and communication services since the exemption was adopted in 1989? Commenters are invited to provide information on the specific circumstances in which foreign broker-dealers use the exemption in paragraph (a)(1) of the current rule and particularly on the frequency of its use. The Commission also seeks comment on its proposed interpretation with respect to third-party quotation systems under the proposed rule. Are there other interpretive issues relating to third-party

[54] *See* 1989 Adopting Release, 54 FR at 30017.

[55] *See id.*

[56] *See id.* at 30021.

[57] *See id.* at 30017.

[58] *See id.*

[59] *See id.*

[60] *See id.* at n.66. For example, the Commission stated that a foreign broker-dealer whose quotations were displayed in a system that disseminated quotes only for large block trades might well be deemed to have engaged in solicitation requiring broker-dealer registration, as opposed to a foreign broker-dealer whose quotes were displayed in a system that disseminated the quotes of numerous foreign dealers or market makers in the same security. *See id.*

[61] *See id.* at 30019. In making the statement that the conduct would not be appropriate ''without registration, ''the Commission did not intend to preclude a foreign broker-dealer from directly inducing U.S. investors to trade with the foreign broker-dealer via such a quotation system where the U.S. investor subscribes to the quotation system through a U.S. broker-dealer, the U.S. broker-dealer has continuing access to the quotation system, the foreign broker-dealer's other contacts with the U.S. investor are permissible under the current rule and any resulting transactions are intermediated in accordance with the requirements of Rule 15a–6(a)(3).

[62] *Cf.* 1997 Staff Letter.

quotation systems, or proprietary quotation systems, that the Commission should address? Is guidance needed under the Commission's interpretation of solicitation for other entities, such as third-party or proprietary systems that provide indications of interest, for purposes of the proposed amendments of Rule 15a–6?

Because one of the requirements for being an alternative trading system under Regulation ATS[63] is to be registered as a broker-dealer under Section 15(b) of the Exchange Act, a foreign broker-dealer relying on an exemption in proposed Rule 15a–6 would not be eligible to rely on the exemption in Regulation ATS. The Commission solicits comment on whether it should consider amending Regulation ATS to allow a foreign broker-dealer relying on an exemption in proposed Rule 15a–6 to operate an alternative trading system in the United States so long as it otherwise complies with the terms of Regulation ATS.

C. Provision of Research Reports

The provision of research to investors also may constitute solicitation by a broker-dealer, in part because broker-dealers often provide research to customers on a non-fee basis, with the expectation that the customers eventually will trade through the broker-dealer.[64] As we noted in adopting Rule 15a–6, the Commission does not wish to restrict the ability of U.S. investors to obtain foreign research reports in the United States if adequate regulatory safeguards are present.[65] Therefore, the Commission would retain the current exemption for the provision of research reports in paragraph (a)(2) of the current rule. However, for the reasons discussed above,[66] the Commission is proposing to expand the class of investors to which the foreign broker-dealer could provide research reports directly from major U.S. institutional investors to qualified investors. As proposed, paragraph (a)(2) would permit a foreign broker-dealer, subject to the conditions discussed below, to furnish research reports to qualified investors and effect transactions in the securities discussed in the research reports with or for those qualified investors.

Paragraph (a)(2) of the proposed rule would retain the conditions in current Rule 15a–6(a)(2), modified solely to reflect the proposed expansion of the class of investors to qualified investors. Specifically, proposed paragraph (a)(2) would be available, provided that: (1) The research reports do not recommend the use of the foreign broker-dealer to effect trades in any security; (2) the foreign broker-dealer does not initiate contact with the qualified investors to follow up on the research reports and does not otherwise induce or attempt to induce the purchase or sale of any security by the qualified investors; (3) if the foreign broker-dealer has a relationship with a registered broker-dealer that satisfies the requirements of paragraph (a)(3) of the proposed rule, any transactions with the foreign broker-dealer in securities discussed in the research reports are effected pursuant to the provisions of paragraph (a)(3); and (4) the foreign broker-dealer does not provide research to U.S. persons pursuant to any express or implied understanding that those U.S. persons will direct commission income to the foreign broker-dealer. We understand from discussions with industry representatives that these conditions have been workable for both foreign broker-dealers and U.S. registered broker-dealers and we have no knowledge of investor protection concerns having been raised with regard to foreign broker-dealers that operate in compliance with the current exemption. Accordingly, we do not propose to amend them.

If these conditions are met, the Commission proposes to allow the foreign broker-dealer to effect transactions in the securities discussed in a research report at the request of a qualified investor. The Commission believes that, under the proposed conditions, the direct distribution of research to qualified investors would be consistent with the free flow of information across national boundaries without raising substantial investor protection concerns.[67]

The Commission seeks comment on the proposed ''Research Reports'' exemption in paragraph (a)(2). Should any of the conditions of the current exemption be changed to address the proposed expansion of the class of institutional investors to which research reports may be distributed directly, or to reflect increasing internationalization in securities markets and advancements in technology and communication services since the exemption was adopted in 1989? If so, how? Similarly, should any of the conditions of the current exemption be changed to more closely align with the proposed modifications to the requirements of paragraph (a)(3) discussed below in Part III.D.? If so, how? Commenters are invited to provide information on the specific circumstances in which foreign broker-dealers use the exemption in paragraph (a)(2) of the current rule and on the frequency of its use.

D. Solicited Trades

The proposed rule would significantly revise the conditions under which a foreign broker-dealer could induce or attempt to induce the purchase or sale of a security by certain U.S. investors under paragraph (a)(3) of Rule 15a–6. Overall, and as discussed more fully below, the proposed rule would reduce and streamline the obligations of the U.S. registered broker-dealer in connection with these transactions and, in certain situations, permit a foreign broker-dealer to provide full-service brokerage by effecting securities transactions on behalf of qualified investors and maintaining custody of qualified investor funds and securities relating to any resulting transactions.

1. Customer Relationship

The proposed rule would require a foreign broker-dealer that induces or attempts to induce the purchase or sale of any security by a qualified investor to engage a U.S. registered broker-dealer under one of two exemptive approaches, to which we will refer as Exemption (A)(*1*) and Exemption (A)(*2*), corresponding to paragraphs (a)(3)(iii)(A)(*1*) and (A)(*2*) of the proposed rule.[68] As explained below, under both proposed exemptions, the U.S. registered broker-dealer would have fewer obligations than under paragraph (a)(3) of the current rule and the foreign broker-dealer would correspondingly be permitted to play a greater role in effecting any resulting transactions. Both proposed exemptions would allow qualified investors the more direct contact they seek with those expert in foreign markets and foreign securities, without certain barriers such as the chaperoning requirements that may be unnecessary in light of other protections and investor sophistication. Nevertheless, as explained below, both proposed exemptions would retain important measures of investor protection that the Commission believes would, among other things, address the potential risks to qualified investors related to contacts with foreign associated persons with a disciplinary history and ensure that the books and records related to transactions for U.S. investors are available to the Commission.

[63] *See* 17 CFR 242.300 *et seq.*

[64] *See* 1989 Adopting Release, 54 FR at 30021.

[65] *See id.*

[66] *See* Part III.A., *supra*.

[67] *See* 1989 Adopting Release, 54 FR at 30021.

[68] *See* proposed Rule 15a–6(a)(3)(iii)(A).

There are two primary differences between the two proposed exemptive approaches. First, Exemption (A)(*1*) could only be used by foreign broker-dealers that conduct a ''foreign business,'' [69] while Exemption (A)(*2*) could be used by all foreign broker-dealers. Second, the foreign broker-dealer would be permitted to custody funds and securities of qualified investors in connection with resulting transactions under Exemption (A)(*1*), but not under Exemption (A)(*2*). These distinctions are discussed in the following paragraphs.

a. Exemption (A)(*1*)

i. Role of the U.S. Registered Broker-Dealer

For transactions effected by a foreign broker-dealer pursuant to proposed Exemption (A)(*1*),[70] a U.S. registered broker-dealer would be required to maintain copies of all books and records, including confirmations and statements issued by the foreign broker-dealer to the qualified investor, relating to any such transactions.[71] As discussed below, the proposed rule would allow such books and records to be maintained by the U.S. registered broker-dealer in the form, manner and for the periods prescribed by the foreign securities authority (as defined in Section 3(a)(50) of the Exchange Act) [72] regulating the foreign broker-dealer.[73] The proposed rule would give the term ''foreign securities authority'' the same meaning as set forth in Section 3(a)(50) of the Exchange Act,[74] which defines ''foreign securities authority'' to mean ''any foreign government, or any governmental body or regulatory organization empowered by a foreign government to administer or enforce its laws as they relate to securities matters.''

Because proposed Exemption (A)(*1*) would allow a foreign broker-dealer to effect transactions for qualified investors and custody their funds and assets, the foreign broker-dealer would generate books and records relating to the transactions. Proposed Exemption (A)(*1*) would allow the U.S. registered broker-dealer to maintain such books and records with the foreign broker-dealer, provided that the U.S. registered broker-dealer makes a reasonable determination that copies of any or all of such books and records could be furnished promptly to the Commission and promptly provides any such books and records to the Commission, upon request.[75] In making such a determination, the U.S. registered broker-dealer would need to consider, among other things, the existence of any legal limitations in the foreign jurisdiction that might limit the ability of the foreign broker-dealer to disclose information relating to transactions conducted pursuant to proposed Exemption (A)(*1*) to the U.S. registered broker-dealer. Proposing to require U.S. registered broker-dealers to make a reasonable determination that the books and records could be furnished promptly to the Commission is designed to ensure that the ability of the Commission to obtain copies of the books and records would not be diminished. It should also significantly reduce the U.S. registered broker-dealer's cost of recordkeeping with respect to transactions effected pursuant to this exemption. Thus, the Commission believes that allowing U.S. registered broker-dealers to maintain books and records with a foreign broker-dealer would appropriately support the Commission's interest in the protection of investors—by being designed to ensure that the books and records related to transactions for U.S. investors are available to the Commission—while avoiding the burden that might be placed on U.S. registered broker-dealers under the exemption by requiring the books and records to be maintained in the form, manner and for the periods prescribed by Rules 17a–3 and 17a–4 under the Exchange Act,[76] as if the U.S. registered broker-dealer had effected the transactions under proposed Exemption (A)(*1*).

Unlike under the current rule, under Exemption (A)(*1*), the intermediating U.S. registered broker-dealer would not be required to effect all aspects of the transaction.[77] Thus, with respect to transactions effected pursuant to Exemption (A)(*1*), the intermediating U.S. registered broker-dealer would no longer be required to comply with the provisions of the federal securities laws, the rules thereunder and SRO rules applicable to a broker-dealer effecting a transaction in securities, unless it were otherwise involved in effecting the transaction.[78] However, if a foreign broker-dealer effects a transaction pursuant to Exemption (A)(*1*) on a U.S. national securities exchange, through a U.S. alternative trading system, or with a market maker or an over-the-counter dealer in the United States, as is common with respect to U.S. securities, a U.S. registered broker-dealer would be involved in effecting the transaction and would be required to comply with the provisions of the federal securities laws, the rules thereunder and SRO rules applicable to such activity. In other words, such provisions would apply with respect to all transactions in U.S. securities under Exemption (A)(*1*) other than certain over-the-counter transactions that a foreign broker-dealer does not effect by or through a U.S. registered broker-dealer.

The intermediating U.S. registered broker-dealer also would no longer be required to extend or arrange for the extension of credit, issue confirmations and account statements, comply with Rule 15c3–1 with respect to the transactions, or receive, deliver and safeguard funds and securities in connection with the transactions in compliance with Rule 15c3–3.[79] In addition, the intermediating U.S. registered broker-dealer would no longer be required to maintain accounts for the customers of foreign broker-dealers relying on Exemption (A)(*1*),[80] or comply with the requirements applicable to broker-dealers that maintain such accounts. As a result, among other requirements, the U.S. registered broker-dealer may not have obligations under Exchange Act Rule 17a–8 [81] with respect to customers of foreign broker-dealers relying on Exemption (A)(*1*). Rule 17a–8 requires a

[69] *See* Part III.D.1.a.ii., *infra*, for discussion of ''foreign business.''

[70] As mentioned above and discussed more fully below, only foreign broker-dealers that conduct a ''foreign business ''would be eligible to effect transactions on behalf of qualified investors pursuant to Exemption (A)(*1*).

[71] *See* proposed Rule 15a–6(a)(3)(iii)(A)(*1*). Of course, this would not prevent the U.S. registered broker-dealer from performing other aspects of the transaction.

[72] 15 U.S.C. 78c(a)(50).

[73] *See* proposed Rule 15a–6(a)(3)(iii)(A)(*1*). Of course, this would not change any books and recordkeeping obligations a U.S. registered broker-dealer may have under Exchange Act Rules 17a–3 and 17a–4 (17 CFR 240.17a–3 and 17a–4).

[74] 15 U.S.C. 78c(a)(50).

[75] *See* Exchange Act Release No. 44992 (Oct. 26, 2001), 66 FR 55818, 55825 & n.72 (Nov. 2, 2001) (''Generally, requests for records which are readily available at the office (either on-site or electronically) should be filled on the day the request is made. If a request is unusually large or complex, then the firm should discuss with the regulator a mutually agreeable time-frame for production. * * * Valid reasons for delays in producing the requested records do not include the need to send the records to the firm's compliance office for review prior to providing the records.'').

[76] *See* 17 CFR 240.17a–3 and 17a–4.

[77] *See* 17 CFR 240.15a–6(a)(3)(iii)(A) (requiring the U.S. registered broker-dealer to effect all aspects of a transaction other than negotiation of its terms) and proposed Rule 15a–6(a)(3)(iii)(A)(*1*); *see also* note 28, *supra*, for a discussion of the differing treatment of U.S. and foreign securities under current Rule 15a–6(a)(3)(iii)(A)(*1*).

[78] *See* note 28, *supra*, for a discussion of the differing treatment of U.S. and foreign securities under current Rule 15a–6(a)(3)(iii)(A)(*1*).

[79] *See* 17 CFR 240.15a–6(a)(3)(iii)(A)(*1*), (*2*), (*3*), (*4*) and (*5*) and the discussion in Part II.C., *supra*.

[80] *See* text accompanying note 38, *supra*.

[81] 17 CFR 240.17a–8.

U.S. registered broker-dealer to comply with the reporting, recordkeeping and record retention requirements in regulations implemented under the Bank Secrecy Act.[82] As discussed above, current Rule 15a–6 permits an unregistered foreign broker-dealer to effect transactions directly with U.S. persons on an unsolicited basis,[83] and to solicit certain U.S. institutional investors by means of research reports and effect transactions in securities discussed in such reports, subject to certain conditions,[84] in either case without intermediation by a U.S. registered broker-dealer subject to Rule 17a–8. Would permitting a foreign broker-dealer to effect securities transactions on a solicited basis with certain U.S. persons under proposed Exemption (A)(*1*) present any concerns with respect to Rule 17a–8 or anti-money laundering obligations under the Bank Secrecy Act? How should these concerns, if any, be addressed? For example, are there specific circumstances in which the Commission should consider imposing additional obligations on the U.S. registered broker-dealer or the foreign broker-dealer under proposed Exemption (A)(*1*) or alternatively prohibiting the use of Exemption (A)(*1*)?

The Commission requests comment generally on the proposed requirements in Exemption (A)(*1*) of the proposed rule. In particular, the Commission requests comment on whether the Commission should require the U.S. registered broker-dealer to comply with any requirements with respect to transactions under Exemption (A)(*1*) other than the proposed requirement to maintain books and records relating to the transactions. Should the requirements differ based on whether the securities are U.S. securities or foreign securities? If so, why and how? The Commission also requests comment on whether the Commission should require the U.S. registered broker-dealer to maintain books and records relating to the transactions in the form, manner and for the periods prescribed by Rules 17a–3 and 17a–4 under the Exchange Act as if the U.S. registered broker-dealer had effected the transactions under Exemption (A)(*1*). In addition, the Commission requests comment on whether the Commission should permit the U.S. registered broker-dealers to maintain copies of books and records resulting from transactions under paragraph Exemption (A)(*1*) with the foreign broker-dealer. Should it depend on the adequacy of the books and recordkeeping requirements to which the foreign broker-dealer is subject? Should the Commission provide more guidance on or should the proposed rule provide parameters for what would constitute a reasonable determination? In lieu of the proposed requirement of a reasonable determination by the U.S. registered broker-dealer under Exemption (A)(*1*), should the Commission condition the exemption on the foreign broker-dealer filing a written undertaking with the Commission to furnish the books and records to the U.S. registered broker-dealer or the Commission upon request?

Furthermore, the Commission requests comment on whether the requirement under Exemption (A)(*1*) that the U.S. registered broker-dealer make a reasonable determination that books and records relating to any resulting transactions could be furnished promptly to the Commission upon request, and promptly provide such books and records to the Commission upon request, is the appropriate standard given the potential time-zone differences and the fact that such records may be maintained in paper form. If not, what is the appropriate standard and why?

ii. Role of the Foreign Broker-Dealer

The proposed rule would limit the availability of Exemption (A)(*1*) to foreign broker-dealers that are regulated for conducting securities activities (such as effecting transactions in securities), including the specific activities in which the foreign broker-dealer engages with the qualified investor, in a foreign country by a foreign securities authority.[85] This requirement is designed to ensure that only foreign entities that are legitimately in the business of conducting securities activities (such as effecting transactions in securities), and that are regulated in the conduct of those activities, could rely on Exemption (A)(*1*).

Both Exemption (A)(*1*) and Exemption (A)(*2*) would require the foreign broker-dealer to disclose to the qualified investor that it is regulated by a foreign securities authority and not by the Commission. Unlike under Exemption (A)(*2*), for the reasons discussed below,[86] the foreign broker-dealer operating under proposed Exemption (A)(1) would also be required to disclose that U.S. segregation requirements (*e.g.*, the requirement that customer funds and assets be segregated from the broker-dealer's own proprietary funds and assets), U.S. bankruptcy protections (*e.g.*, preference to creditors in bankruptcy) and protections under the Securities Investor Protection Act (''SIPA'')[87] will not apply to any funds and securities of the qualified investor held by the foreign broker-dealer.[88]

These disclosure requirements are intended to help to put qualified investors on notice that foreign broker-dealers operating pursuant to Exemption (A)*(1)* of the proposed rule would not be subject to the same regulatory requirements as U.S. registered broker-dealers. This notice would be important because the proposed rule would eliminate the current chaperoning requirements, as described below, and allow a foreign broker-dealer to effect transactions on behalf of qualified investors and custody qualified investor funds and securities relating to any resulting transactions with more limited participation in the transactions by a U.S. registered broker-dealer. This should be sufficient notice given the level of sophistication of the investors with which the foreign broker-dealer would be engaging in transactions under Exemption (A)*(1)*. Specifically, proposing to require disclosure that the foreign broker-dealer is regulated by a foreign securities authority and not the Commission should alert qualified investors that the foreign broker-dealer would not be subject to the full scope of the Commission's broker-dealer regulatory framework. Proposing to require disclosure that U.S. segregation requirements, U.S. bankruptcy protection and protections under the SIPA would not apply to the funds and securities of the qualified investor held by the foreign broker-dealer should alert the qualified investor that its funds and assets would not receive the same protections that they would under U.S. law.

Exemption (A)*(1)* would only be available to foreign broker-dealers that

[82] Currency and Foreign Transactions Reporting Act of 1970 (commonly referred to as the Bank Secrecy Act). *See* 31 U.S.C. 5311 et seq., 12 U.S.C. 1829b and 12 U.S.C. 1951–1959. The Secretary of the U.S. Department of Treasury has delegated responsibility for the administration of the Bank Secrecy Act to the Director of the Financial Crimes Enforcement Network (''FinCEN''), a bureau of the U.S. Department of Treasury. *See* Treasury Order 180–01 (Sep. 26, 2002).

[83] *See* Part II.A., *supra*.

[84] *See* Part II.B., *supra*.

[85] *See* proposed Rule 15a–6(b)(2)(i).

[86] *See* Part III.D.b.ii., *infra*.

[87] 15 U.S.C. 78aaa *et seq*. The SIPA created the Securities Investor Protection Corporation (''SIPC''), a nonprofit, private membership corporation to which most registered brokers and dealers are required to belong, and established a fund administered by SIPC designed to protect the customers of brokers or dealers subject to the Act from loss in case of financial failure of the member.

[88] *See* proposed Rule 15a–6(a)(3)(i)(D)(1) and (2).

conduct a ''foreign business.''[89] As explained below, the proposed rule would define ''foreign business'' to mean the business of a foreign broker-dealer with qualified investors and foreign resident clients[90] where at least 85% of the aggregate value of the securities purchased or sold in transactions conducted pursuant to both paragraphs (a)(3) and (a)(4)(vi) of the proposed rule by the foreign broker-dealer, calculated on a rolling two-year basis, is derived from transactions in foreign securities, as defined below.[91] In general, the Commission believes that making Exemption (A)*(1)* available only to a foreign broker-dealer conducting a foreign business would provide U.S. investors increased access to foreign securities and markets without creating opportunities for regulatory arbitrage vis-á-vis U.S. securities markets because the foreign broker-dealer's business in U.S. securities would be limited.

The proposed definition of foreign securities would include both debt and equity securities of foreign private issuers and debt securities of issuers organized or incorporated in the United States but where the distribution is wholly outside the United States in compliance with Regulation S, as well as certain securities issued by foreign governments. The proposed definition is not restricted to certain types of securities, rather, to the extent that qualified investors are interested in purchasing foreign securities, the Commission believes that they should be able to access a broad range of foreign securities. The proposed rule would define ''foreign securities'' to mean:

(i) An equity security (as defined in 17 CFR 230.405) of a foreign private issuer (as defined in 17 CFR 230.405);[92]

(ii) A debt security (as defined in 17 CFR 230.902) of a foreign private issuer (as defined in 17 CFR 230.405);

(iii) A debt security (as defined in 17 CFR 230.902) issued by an issuer organized or incorporated in the United States in connection with a distribution conducted solely outside the United States pursuant to Regulation S (17 CFR 230.903 *et seq.*);[93]

(iv) A security that is a note, bond, debenture or evidence of indebtedness issued or guaranteed by a foreign government (as defined in 17 CFR 230.405) that is eligible to be registered with the Commission under Schedule B of the Securities Act; and

(v) A derivative instrument on a security described in subparagraph (i), (ii), (iii), or (iv) of this paragraph.[94]

The proposed rule would require the foreign broker-dealer to compute the absolute value of all transactions pursuant to both paragraphs (a)(3) and (a)(4)(vi) of the proposed rule (*i.e.*, without netting the transactions) each year to determine the aggregate amount for the previous two years. For example, a foreign broker-dealer that sold 100 shares of Security A at $10.00 per share and bought 100 shares of Security A at $10.00 per share pursuant to paragraphs (a)(3) and (a)(4)(vi) of the proposed rule would have an aggregate value of securities bought and sold of $2000.00 (or (100 × $10.00) + (100 × $10.00)).

We note that the definition of foreign security would include, among other things, derivative instruments on debt and equity securities of foreign private issuers. Given that the proposed rule would provide an exemption for foreign broker-dealers that effect transactions in securities, the proposed definition of ''foreign securities'' would not include derivative instruments that are not themselves securities. Thus, foreign broker-dealers would not need to include the value of swap agreements that meet the definition of ''swap agreement'' in Section 206A of the Gramm-Leach-Bliley Act (''GLBA'') in the foreign business test calculation because they are excluded from the definition of security.[95] In the case of other derivative instruments that are securities, the valuation would depend on the product. For example, the value of options on a security or group or index of securities bought or sold would be the premium paid by the buyer, not the value of the underlying security or securities. Similarly, the value of a security future would be the price times the number of securities to be delivered at the time the transaction is entered into.

Foreign broker-dealers should be able to use this valuation information to calculate the total, combined value of the securities purchased or sold in transactions conducted pursuant to both paragraphs (a)(3) and (a)(4)(vi) of the proposed rule to determine the percentage of foreign securities bought from, or sold to, U.S. investors.

The calculation of the composition of the foreign broker-dealer's business on a rolling, two-year basis would mean that, after the first year the foreign broker-dealer relies on the exemption, the foreign broker-dealer would calculate the aggregate value of securities purchased and sold for the prior two years to determine whether it has complied with the foreign business test to be eligible for proposed Exemption (A)(*1*). This proposed requirement would allow for short-term fluctuations that otherwise could cause a foreign broker-dealer to be out of compliance with the exemption on isolated occasions. A foreign broker-dealer would have the flexibility to elect to use a calendar year or the firm's fiscal year for purposes of complying with the foreign business test. In addition, to provide foreign broker-dealers sufficient time to obtain and verify the relevant aggregate value data, the proposed rule would allow foreign broker-dealers to rely on the calculation made for the prior year for the first 60 days of a new year.[96] Hence, a foreign broker-dealer that had a foreign business over years 1 and 2 would be deemed to have a foreign business for the first 60 days of year 4, regardless of the result of the calculation for year 3. We believe that 60 days would be an appropriate ''grace period'' because it would give a foreign broker-dealer time to make the necessary calculation and to cease relying on Exemption (A)(*1*) if the calculation revealed that it was no longer conducting a foreign business.

Making Exemption (A)(*1*) available only to a foreign broker-dealer

[89] *See* proposed Rule 15a–6(b)(2)(ii).

[90] *See* Part III.E., *infra*.

[91] *See* proposed Rule 15a–6(b)(3).

[92] 17 CFR 230.405 defines ''foreign private issuer'' to mean any foreign issuer other than a foreign government, except issuers that meet the following conditions: (1) More than 50 percent of the outstanding voting securities of such issuer directly or indirectly owned of record by residents of the United States; and (2) any of the following: (i) the majority of the executive officers or directors are U.S. citizens or residents; (ii) more than 50 percent of the assets of the issuer are located in the United States; or (iii) the business of the issuer is administered principally in the United States. The rule sets forth guidelines for determining the percentage of outstanding voting securities owned of record by residents of the United States.

[93] Thus, debt securities of an issuer organized or incorporated under the laws of the United States would not qualify as ''foreign securities'' if they were offered and sold as part of a global offering involving both an offer and sale of the securities in the United States and a contemporaneous distribution outside the United States. This would be consistent with the purpose of the foreign business test, as discussed below.

[94] *See* proposed Rule 15a–6(b)(5).

[95] The GLBA defines ''swap agreement,'' in part, as an agreement between eligible contract participants (as defined in Section 1a(12) of the Commodity Exchange Act), the material terms of which (other than price and quantity) are subject to individual negotiation. Swap agreements may be based on a wide range of financial and economic interests. Section 206B of the GLBA defines ''security-based swap agreement'' as a swap agreement of which ''a material term is based on the price, yield, value, or volatility of any security or any group or index of securities, or any interest therein.'' Section 3A of the Exchange Act excludes from the definition of security both security-based swap agreements and ''non-security-based swap agreements.'' The Commission retains, however, antifraud authority (including authority over insider trading) over security-based swap agreements. *See, e.g.,* Section 10(b) of the Exchange Act.

[96] *See* proposed Rule 15a–6(b)(3).

conducting a foreign business would provide U.S. investors increased access to foreign securities and foreign markets without creating opportunities for regulatory arbitrage vis-á-vis U.S. securities markets because the foreign broker-dealer's business in U.S. securities would be limited. We believe this is particularly important because, under Exemption (A)(*1*), for the first time, a foreign broker-dealer would be able to provide full-service brokerage services (including maintaining custody of funds and securities from resulting transactions) to certain U.S. investors.

We are proposing an 85% percent threshold for determining whether a foreign broker-dealer conducts a foreign business because we understand from industry representatives that foreign broker-dealers currently effect transactions pursuant to paragraph (a)(3) of Rule 15a–6 primarily in foreign securities and only do a small percentage of business in U.S. securities (less than 10%, by most estimates). The Commission has not been given any indication that foreign broker-dealers would seek to use an expanded exemption to increase their business in U.S. securities. The 85% threshold should accommodate existing business models and allow foreign broker-dealers to continue to do a limited amount of business in U.S. securities, whether as an accommodation to their clients or as part of program trading (*i.e.*, any trading strategy involving the related purchase or sale of a group of stocks as part of a coordinated trading strategy, which could include U.S. securities), without causing those foreign broker-dealers to lose the benefit of the exemption. Any lower threshold could allow a foreign broker-dealer to conduct significant business in U.S. securities with certain U.S. investors without being subject to the full scope of the Commission's broker-dealer regulatory framework. This, in turn, could hinder the ability of the Commission to protect investors, maintain fair, orderly and efficient markets and facilitate capital formation,[97] as well as affect the competitive positions of U.S. registered broker-dealers and foreign broker-dealers.[98]

The Commission seeks comment on proposed Exemption (A)(*1*) generally. We invite comment on the proposed limitation of foreign broker-dealers to those that are regulated for conducting securities activities by a foreign securities authority and that conduct a foreign business. The Commission also seeks comment on whether the proposed disclosures provide appropriate notice to qualified investors that foreign broker-dealers would not be subject to the same regulatory requirements as U.S. registered broker-dealers. Would notice be sufficient? Are there other disclosures that should be required, in particular if the foreign jurisdiction does not require the segregation of qualified investor funds and assets or provide for bankruptcy protection for those funds and assets? Should the foreign broker-dealer be required to identify the foreign securities authority or authorities regulating the foreign broker-dealer? Should disclosure of the applicable dispute resolution system be required? In addition, the Commission requests comment regarding the proposed required form of these disclosures. Should the proposed disclosures be eliminated or modified in any way? If so, how and why?

The Commission solicits comment on the proposed definition of foreign broker-dealer. Should the proposed rule require a foreign broker-dealer to be regulated for conducting securities activities, including the specific activities in which the foreign broker or dealer engages with the qualified investor, in a foreign country by a foreign securities authority? What if foreign securities authorities do not apply their regulations to the activities of their broker-dealers outside their country or with non-residents? The Commission also seeks comment on the proposed definition of foreign securities.[99] Are there any other types of securities that should be included within the definition? Should any types of securities be excluded? Will reference to the equity and debt securities of a ''foreign private issuer,'' as that term is defined in 17 CFR 230.405, affect the interest of foreign issuers to cross-list on both foreign and U.S. exchanges? If so, how? Furthermore, will reference to the equity and debt securities of a ''foreign private issuer,'' as that term is defined in 17 CFR 230.405, affect listings of American Depositary Receipts issued by depositaries against the deposit of the securities of foreign issuers on U.S. exchanges? If so, how?

The Commission seeks comment on the proposed definition of ''foreign business.'' [100] Would the proposed test be workable? Would it be relatively easy for foreign broker-dealers to make the foreign business test calculation? Should the proposed test apply separately to debt and equity securities? Should the proposed test exclude U.S. government securities from the percentage of business in U.S. securities for purposes of computing the threshold? Is the proposed method of valuing options and security futures appropriate? Should we provide examples of how to value other types of derivative instruments?

The Commission requests comment on whether the proposed 85% threshold would be sufficient to enable foreign broker-dealers to effect transactions in U.S. securities as an accommodation and engage in program trading with qualified investors. Would compliance with the threshold be easily determinable? Should it be raised or lowered to better protect against regulatory arbitrage or to achieve its stated purposes? Commenters suggesting a different threshold or a different method for determining compliance with the threshold should explain why the Commission should choose that threshold or method. Instead of requiring foreign broker-dealers to conduct a ''foreign business,'' should Exemption (A)(*1*) of the proposed rule instead permit foreign broker-dealers to effect transactions in foreign securities and U.S. government securities, with a limited exemption for the purchase of U.S. securities by qualified persons as part of a program trade, provided that the purchase or sale of foreign securities predominates?

b. Exemption (A)(*2*)

Proposed Exemption (A)(*2*) is designed to be used by foreign broker-dealers that would like to solicit transactions from qualified investors that have accounts, and custody their funds and securities, with U.S. registered broker-dealers. Because we expect that qualified investors would likely select a foreign broker-dealer for its knowledge of local markets and/or its ability to execute trades in particular markets, as they would under Exemption (A)(*1*), but the foreign broker-dealer would not be acting as custodian of the funds and securities of the qualified investor (*i.e.,* not acting as a full-service broker), we do not believe it would be necessary for Exemption (A)(*2*) to include certain of the requirements proposed to be included in Exemption (A)(*1*), particularly the proposed requirement that the foreign broker-dealer conduct a foreign business, as described above.

i. Role of the U.S. Registered Broker-Dealer

Under Exemption (A)(*2*), the U.S. registered broker-dealer would be responsible for maintaining books and

[97] *See* Exchange Act Section 2, 15 U.S.C. 78b.

[98] *See* Exchange Act Section 3(f); *see also* Part VI.C., *infra*.

[99] *See* proposed Rule 15a–6(b)(5).

[100] *See* proposed Rule 15a–6(b)(3).

records, including copies of all confirmations issued by the foreign broker-dealer to the qualified investor, relating to any transactions effected under this exemption.[101] This requirement is designed to ensure that the Commission would have access to books and records relating to resulting transactions, as well as copies of confirmations issued by the foreign broker-dealer to the qualified investor. Because the U.S. registered broker-dealer would carry the account of the qualified investor under Exemption (A)(*2*), we understand from discussions with industry representatives that it would be consistent with current business practices for the U.S. registered broker-dealer to maintain the books and records for transactions effected under this exemption.

Proposed Exemption (A)(*2*) would also require the U.S. registered broker-dealer to receive, deliver and safeguard funds and securities in connection with the transactions on behalf of the qualified investor in compliance with Rule 15c3–3 under the Exchange Act.[102] As explained below, Exemption (A)(*2*) is designed to permit qualified investors that have an account with a U.S. registered broker-dealer to have access to foreign broker-dealers regardless of the types of securities that are involved.[103]

Unlike under the current rule, under Exemption (A)(*2*), the intermediating U.S. registered broker-dealer would not be required to effect the transaction.[104] Thus, with respect to transactions effected pursuant to Exemption (A)(*2*), the intermediating U.S. registered broker-dealer would no longer be required to comply with the provisions of the federal securities laws, the rules thereunder and SRO rules applicable to a broker-dealer effecting a transaction in securities, unless it were otherwise involved in effecting the transaction.[105] However, if a foreign broker-dealer effects a transaction pursuant to Exemption (A)(*2*) on a U.S. national securities exchange, through a U.S. alternative trading system, or with a market maker or an over-the-counter dealer in the United States, as is common with respect to U.S. securities, a U.S. registered broker-dealer would be involved in effecting the transaction and would be required to comply with the provisions of the federal securities laws, the rules thereunder and SRO rules applicable to such activity. In other words, such provisions would apply with respect to all transactions in U.S. securities under Exemption (A)(*2*) other than certain over-the-counter transactions that a foreign broker-dealer does not effect by or through a U.S. registered broker-dealer.

ii. Role of the Foreign Broker-Dealer

A foreign broker-dealer relying on Exemption (A)(*2*) would not be permitted to maintain custody of qualified investor funds and securities relating to any resulting transactions. Because of this limitation, Exemption (A)(*2*) would be available to all foreign broker-dealers and not just those that conduct a foreign business. Because entities that meet the definition of foreign broker-dealer under the proposed rule could not operate full-service brokerage under this exception, we believe that there is less risk of regulatory arbitrage.

Like Exemption (A)(*1*), Exemption (A)(*2*) would only be available to foreign broker-dealers that are regulated for conducting securities activities, including the specific activities in which the foreign broker-dealer engages with the qualified investor, in a foreign country by a foreign securities authority.[106] This requirement is designed to ensure that only foreign entities that are legitimately in the business of conducting securities activities (such as effecting transactions in securities), and that are regulated in the conduct of those activities, could rely on Exemption (A)(*2*). In addition, the foreign broker-dealer relying on Exemption (A)(*2*) would be required to disclose to the qualified investor that the foreign broker-dealer is regulated by a foreign securities authority and not by the Commission. Unlike under Exemption (A)(*1*), however, the foreign broker-dealer relying on Exemption (A)(*2*) would not be required to provide disclosures to the qualified investor regarding segregation requirements, bankruptcy protections and protections under SIPA. The Commission does not believe these disclosures would be necessary given that, under proposed Exemption (A)(*2*), the U.S. registered broker-dealer would be maintaining custody of funds and securities of qualified investors in connection with the resulting transactions.

As noted above, we expect that Exemption (A)(*2*) would be used by qualified investors that would like to access foreign broker-dealers but nonetheless would like to have an account, and maintain custody of their funds and securities, with a U.S. registered broker-dealer. Because a foreign broker-dealer would be selected for its knowledge of local markets and/or its ability to execute trades in particular markets, but would not be acting as custodian of the funds and securities of the qualified investor (*i.e.*, not acting as a full-service broker), we do not believe it would be necessary for proposed Exemption (A)(*2*) to include certain of the requirements contained in proposed Exemption (A)(*1*), particularly the requirement that the foreign broker-dealer conduct a foreign business, as described above.

The Commission requests comment on proposed Exemption (A)(*2*) generally. How would this exemption likely be used and by whom? Should proposed Exemption (A)(*2*) be available when the U.S. registered broker-dealer does not maintain custody of the qualified investor's funds and securities (*e.g.*, when a U.S. or foreign affiliate of the U.S. registered broker-dealer custodies the funds and securities otherwise than pursuant to Rule 15c3–3 under the Exchange Act)?[107]

The Commission also seeks comment on whether the proposed rule should require the U.S. registered broker-dealer to comply with any requirements with respect to transactions under Exemption (A)(*2*) other than the proposed requirement to maintain books and records and maintain custody of qualified investors' funds and securities relating to the transactions. Should the requirements differ based on whether the securities are U.S. securities or foreign securities? If so, why?

In addition, the Commission seeks comment on whether the proposed disclosures would provide appropriate notice to qualified investors that foreign broker-dealers would not be subject to the same regulatory requirements as U.S. registered broker-dealers. Would notice be sufficient? Are there are other

[101] *See* proposed Rule 15a–6(a)(3)(iii)(A)(*2*)(*i*).

[102] 17 CFR 240.15c3–3. *See* proposed Rule 15a–6(a)(3)(iii)(A)(*2*)(*ii*). Securities received and safeguarded under Exemption (A)(*2*) would be securities carried for the account of a customer under Rule 15c3–3(a)(2). 17 CFR 240.15c3–3(a)(2).

[103] Under Exemption (A)(*2*), the foreign broker-dealer would be permitted to clear and settle the transactions on behalf of the U.S. registered broker-dealer. The Commission believes that this is appropriate for transactions effected under Exemption (A)(*2*) for investors that possess the sophistication of qualified investors, particularly given that the exemption would require a U.S. registered broker-dealer to maintain books and records and receive, deliver and safeguard funds and securities in connection with the transactions.

[104] *See* 17 CFR 240.15a–6(a)(3)(iii)(A) (requiring the U.S. registered broker-dealer to effect all aspects of a transaction other than negotiation of its terms) and proposed Rule 15a–6(a)(3)(iii)(A)(*2*); *see also* note 28, *supra*, for a discussion of the differing treatment of U.S. and foreign securities under current Rule 15a–6(a)(3)(iii)(A)(*1*).

[105] *See* note 28, *supra*, for a discussion of the differing treatment of U.S. and foreign securities under current Rule 15a–6(a)(3)(iii)(A)(*1*).

[106] *See* proposed Rule 15a–6(b)(2)(i).

[107] 17 CFR 240.15c3–3.

disclosures that should be required? In particular, should the foreign broker-dealer be required to identify the foreign securities authority or authorities regulating the foreign broker-dealer? Should disclosure of the applicable dispute resolution system be required? In addition, the Commission requests comment regarding the proposed required form of these disclosures. Should the proposed disclosures be eliminated or modified in any way? If so, how and why?

In general, the Commission seeks comment on whether proposed Exemption (A)(*1*) and Exemption (A)(*2*) alternatives would provide a meaningful choice for qualified investors wishing to access foreign broker-dealers. What would be the advantages and disadvantages of using each alternative?

2. Sales Activities

Both proposed Exemption (A)(*1*) and proposed Exemption (A)(*2*) would eliminate the requirements in current Rule 15a–6(a)(3) for foreign associated persons [108] to be accompanied by an associated person of a U.S. registered broker-dealer during in-person visits with U.S. investors. The proposed rule also would eliminate the current requirement for an associated person of a U.S. registered broker-dealer to participate in communications between foreign associated persons and U.S. investors, whether oral or electronic.

From discussions with industry representatives, the staff understands that the current chaperoning requirements have been criticized as impractical and that they have been viewed as imposing unnecessary operational and compliance burdens particularly for communications with broker-dealers in time zones outside those of the United States. The current rule allows some unchaperoned contacts, in part due to the existence of other provisions of the rule that require review of ''the background of, foreign personnel who will contact U.S. institutional investors.'' [109] The proposed amendments would retain the requirement that the background of foreign personnel be reviewed, albeit by the foreign broker-dealer,[110] but would expand the ability of foreign broker-dealers to have unchaperoned contacts. Specifically, the proposed rule would not limit a foreign broker-dealer's ability to have unchaperoned communications, both oral and electronic, with qualified investors, as part of a transaction pursuant to either exemption in paragraph (a)(3) of the proposed rule. In addition, the proposed rule would provide that a foreign associated person may conduct unchaperoned visits to qualified investors within the United States, provided that transactions in any securities discussed during visits by the foreign associated person with qualified investors are effected pursuant to either exemption in paragraph (a)(3) of the proposed rule because these transactions would be viewed as being solicited.[111] The Commission believes that increasing the ability of foreign broker-dealers to have unchaperoned contacts should provide greater flexibility for both investors and industry participants in conducting communications and that eliminating the requirement to have a U.S. registered broker-dealer present for such communications should not result in any significant loss of safeguards for qualified investors because of the sophistication and experience standards in the definition of qualified investor and the proposed disclosure requirements in Exemption (A)(*1*) and Exemption (A)(*2*).

As noted above, the proposed rule would allow a foreign broker-dealer to have unchaperoned visits within the United States. Whether a foreign associated person's stay in the United States would qualify as a ''visit'' for purposes of the proposed rule would be a facts and circumstances determination based on factors including, but not limited to, the purpose, length and frequency of any stays. The Commission proposes to interpret a ''visit'' as one or more trips to the United States over a calendar year that do not last more than 180 days in the aggregate. The purpose of this proposed limitation regarding visits is to prevent foreign broker-dealers from essentially having a permanent sales force in the United States, which may result in foreign broker-dealers essentially conducting a U.S. based business, similar to U.S. registered broker-dealers, without appropriate regulatory oversight of these foreign broker-dealers. We preliminarily believe that 180 days strikes the proper balance between facilitating legitimate foreign broker-dealer activity in the United States, such as investment banking, and the potential competitive issues with U.S. registered broker-dealers and investor protection concerns.

The Commission requests comment on its proposed interpretation of what would constitute a visit. Should the Commission provide a bright-line definition of what constitutes a ''visit'' or is a more flexible approach appropriate? Is it appropriate to interpret ''visit'' as a specific number of days in a calendar year that a foreign broker-dealer could be in the United States? If so, is 180 days a calendar year appropriate? Or would a lower number such as 120, 90, 60, or 30 days a calendar year be more appropriate? We also solicit comment on the factors for determining what qualifies as a ''visit,'' described above. In addition, the Commission requests comment on eliminating the chaperoning requirements of the current rule. Are unchaperoned contacts between foreign broker-dealers and their associated persons and qualified investors appropriate?

3. Establishment of Qualification Standards

Foreign broker-dealers intending to rely on proposed Rule 15a–6(a)(3) would need to meet certain qualification requirements.[112] As under the current rule, the foreign broker-dealer would be required to provide the Commission, upon request or pursuant to agreement between the Commission or the United States and any foreign securities authority, information or documents related to the foreign broker-dealer's activities in inducing or attempting to induce securities transactions by qualified investors.[113] This information would permit the Commission to monitor and follow up on transactional activity conducted under Rule 15a–6, as necessary and appropriate.

The proposed rule also would require the foreign broker-dealer to determine that its associated persons that effect transactions with qualified investors are not subject to a statutory disqualification under Section 3(a)(39) of the Exchange Act.[114] This would be a change from the current rule, which requires the U.S. registered broker-dealer intermediating the transaction to make this determination.[115] Specifically, current Rule 15a–6(a)(3)(ii)(B) requires a U.S. registered broker-dealer to determine that the foreign associated persons of a foreign broker-dealer effecting transactions with U.S. institutional investors or major U.S. institutional investors are not subject to

[108] The proposed rule would retain the definition of ''foreign associated person'' that is in paragraph (b)(2) of the current Rule 15a–6, but would substitute ''qualified investor'' for ''U.S. institutional investor or major U.S. institutional investor'' in the definition. *See* proposed Rule 15a–6(b)(1).

[109] *See* 1988 Proposing Release, 53 FR at 23653.

[110] *See* Proposed Rule 15a–6(a)(3)(i)(B) and (C).

[111] *See* proposed Rule 15a–6(a)(3)(ii).

[112] *See* proposed Rule 15a–6(a)(3)(i).

[113] *See* proposed Rule 15a–6(a)(3)(i)(A) and 17 CFR 240.15a–6(a)(3)(i)(B).

[114] *See* proposed Rule 15a–6(a)(3)(i)(B).

[115] *See* 17 CFR 240.15a–6(a)(3)(ii)(B).

a statutory disqualification specified in Section 3(a)(39) of the Exchange Act, or certain substantially equivalent foreign disciplinary actions. Because of subsequent legislation, the proposed rule would no longer separately describe the foreign equivalents of statutory disqualification.[116] The Commission believes shifting the responsibility for making the statutory disqualification determination would be appropriate because the foreign broker-dealer is in possession of the relevant information regarding its foreign associated persons. Thus, we believe, as a practical matter, foreign broker-dealers are already making this determination so that U.S. registered broker-dealers can comply with their obligations under the existing rule. As discussed below, the proposed rule would require the U.S. registered broker-dealer to obtain a representation from the foreign broker-dealer that it has made this determination.

Under the current rule, a U.S. registered broker-dealer must obtain, with respect to each foreign associated person, information specified in Rule 17a–3(a)(12) under the Exchange Act [117] that relates to activities under paragraph (a)(3).[118] The proposed rule would require the foreign broker-dealer to maintain this information in its files and make it available upon request by the U.S. registered broker-dealer or the Commission.[119] This information would include the foreign associated person's name; address; social security number or foreign equivalent; the starting date of employment or other association with the foreign broker-dealer; date of birth; a complete, consecutive statement of all the foreign associated person's business connections for at least the preceding ten years, including whether the employment was part-time or full-time; a record of any denial of membership or registration, and of any disciplinary action taken, or sanction imposed, upon the foreign associated person by any agency, or by any securities exchange or securities association, including any finding that the foreign associated person was a cause of any disciplinary action or had violated any law; a record of any denial, suspension, expulsion or revocation of membership or registration of any foreign broker-dealer with which the foreign associated person was associated in any capacity when such action was taken; a record of any permanent or temporary injunction entered against the foreign associated person or any foreign broker-dealer with which the foreign associated person was associated in any capacity at the time such injunction was entered; a record of any arrest or indictment for any felony or foreign equivalent, or any misdemeanor or foreign equivalent pertaining to securities, commodities, banking, insurance or real estate (including, but not limited to, acting or being associated with a foreign broker-dealer), fraud, false statements or omissions, wrongful taking of property or bribery, forgery, counterfeiting or extortion, and the disposition of the foregoing; and a record of any other name or names by which the foreign associated person has been known or which the foreign associated person has used.[120]

The proposed rule would provide that the information kept by the foreign broker-dealer as specified in Rule 17a–3(a)(12)(i)(D) [121] must include documentation of sanctions imposed by foreign securities authorities, foreign exchanges, or foreign associations, including without limitation those described in Section 3(a)(39) of the Exchange Act.[122] The Commission believes shifting the responsibility would be appropriate because the foreign broker-dealer is in possession of the relevant information regarding its foreign associated persons. Thus, we believe, as a practical matter, foreign broker-dealers are already making this determination so that U.S. registered broker-dealers can comply with their obligations under the existing rule. As discussed below, the proposed rule would require the U.S. registered broker-dealer to obtain a representation from the foreign broker-dealer that it is maintaining the required information.

Consistent with the current rule, proposed Rule 15a–6(a)(3) would require the U.S. registered broker-dealer to obtain from the foreign broker-dealer and each foreign associated person written consent to service of process for any civil action brought by or proceeding before the Commission or a self-regulatory organization (as defined in Section 3(a)(26) of the Exchange Act).[123] The U.S. registered broker-dealer would also be responsible for obtaining from the foreign broker-dealer a representation that the foreign broker-dealer has determined that any foreign associated person of the foreign broker-dealer effecting transactions with the qualified investor is not subject to a statutory disqualification specified in Section 3(a)(39) of the Act, as required by paragraph (a)(3)(i)(B) of the proposed rule and discussed above.[124]

In addition, the U.S. registered broker-dealer would be responsible for obtaining from the foreign broker-dealer a representation that it has in its files, and the foreign broker-dealer would make available upon request by the U.S. registered broker-dealer or the Commission, the types of information specified in Rule 17a–3(a)(12) under the Act, as required by paragraph (a)(3)(i)(C) of the proposed rule and discussed above.[125] Finally, the proposed rule would require the U.S. registered broker-dealer to maintain records of these written consents and representations and, as in the current rule, make these records available to the Commission upon request.[126] These proposed requirements are important because they are designed to ensure that the Commission would be able to obtain information regarding foreign associated persons if it were necessary in the context of an investigation into alleged misconduct by a foreign broker-dealer or persons associated with the foreign broker-dealer. The Commission believes that allowing U.S. registered broker-dealers to rely upon the determinations and representations of foreign broker-dealers discussed above is a balanced approach that should address the risks

[116] At the time the Commission adopted Rule 15a–6, the definition of ''statutory disqualification'' in Section 3(a)(39) did not include expulsions, suspensions or other orders under foreign statutes or foreign equivalents of U.S. regulatory authorities. The International Securities Enforcement Cooperation Act of 1990 amended Section 3(a)(39) to include certain foreign conduct and disciplinary action in the definition of ''statutory disqualification'', including each type of conduct or disciplinary action described in paragraphs (a)(3)(ii)(B)(*1*)(*i*)–(*v*), (a)(3)(ii)(B)(*2*) and (a)(*3*)(ii)(B)(*3*) of Rule 15a–6. *See* Pub. L. 101–550, 104 Stat. 2714 (1990).

[117] 17 CFR 240.17a–3(a)(12).

[118] *See* 17 CFR 240.15a–6(a)(3)(iii)(C).

[119] *See* Proposed Rule 15a–6(a)(3)(i)(C).

[120] 17 CFR 240.17a–3(a)(12).

[121] 17 CFR 240.17a–3(a)(12)(i)(D) (requiring a broker-dealer to make and keep current a record of any denial of membership or registration, and of any disciplinary action taken, or sanction imposed, upon the associated person by any federal or state agency, or by any national securities exchange or national securities association, including any finding that the associated person was a cause of any disciplinary action or had violated any law).

[122] *See* proposed Rule 15a–6(a)(3)(i)(C).

[123] *See* proposed Rule 15a–6(a)(3)(iii)(B) and 17 CFR 240.15a–6(a)(3)(iii)(C). As in the current rule, the consent would be required to provide that process may be served on them by service on the registered broker-dealer in the manner set forth on the registered broker's or dealer's current Form BD. This would put individuals on notice of the manner in which process would be served.

[124] *See* proposed Rule 15a–6(a)(3)(iii)(C).

[125] *See id.*

[126] *See* proposed Rule 15a–6(a)(3)(i)(D). The provisions of proposed Rules 15a–6(a)(3)(iii)(B) and (D) are similar to paragraphs (a)(3)(iii)(D) and (E) of the current rule, although the proposed rule would eliminate the requirement under current Rule 15a–6(a)(3)(iii)(E) that the registered broker-dealer maintain a written record of all records in connection with trading activities of the qualified investor involving the foreign broker-dealer. This requirement is subsumed in other sections of the proposed rule. *See* proposed Rule 15a–6(a)(3)(iii)(A)–(D).

to qualified investors related to, among other things, contacts with foreign associated persons with a disciplinary history.

The Commission seeks comment on the qualification standards that would apply to foreign broker-dealers and U.S. registered broker-dealers under the proposed rule. Commenters are invited to discuss whether reliance by a U.S. registered broker-dealer upon the determinations and representations of a foreign broker-dealer appropriately addresses the potential risks to qualified investors related to, among other things, contacts with foreign associated persons with a disciplinary history. Should any of the responsibilities for making the statutory disqualification determinations or obtaining consents be shifted? Should the proposed rule require that the foreign broker-dealer (or the U.S. registered broker-dealer) determine whether the foreign associated persons are subject to statutory disqualifications?

E. Counterparties and Specific Customers

As in the current rule, proposed Rule 15a–6(a)(4) would provide exemptions for foreign broker-dealers that effect transactions in securities with or for, or induce or attempt to induce the purchase or sale of any security, by certain persons, including registered broker-dealers, certain international banks and bank organizations, certain foreign persons temporarily present in the United States and certain U.S. persons or groups of U.S. persons abroad. We understand from discussions with industry that these exemptions have been workable for both foreign broker-dealers and the U.S. entities and we have no knowledge of investor protection concerns being raised. Accordingly, we do not propose to amend them.

We do, however, propose to provide an additional exemption for transactions with U.S. resident fiduciaries of accounts for ''foreign resident clients'' because it is our understanding that foreign resident clients would not assume that the broker-dealer through which a U.S. resident fiduciary is effecting transactions is regulated by the Commission.[127] The proposed rule would define ''foreign resident client'' to mean ''(i) any entity not organized or incorporated under the laws of the United States and not engaged in a trade or business in the United States for federal income tax purposes; (ii) any natural person not a resident for federal income tax purposes; and (iii) any entity not organized or incorporated under the laws of the United States, 85 percent or more of whose outstanding voting securities are beneficially owned by persons in subparagraphs (i) and (ii) of this paragraph.'' [128] Discussions with industry have indicated that these are the types of entities that would likely use the proposed exemption. We selected the 85 percent threshold to capture foreign entities that are predominantly foreign-owned, while accommodating a small amount of U.S. ownership.[129]

For purposes of both the broker-dealer registration provisions of the Exchange Act and the proposed exemption provided by Rule 15a–6(a)(4)(vi), a U.S. resident fiduciary is considered to be a U.S. person, regardless of the residence of the owners of the underlying accounts. Accordingly, absent an exemption, a foreign broker-dealer that induces or attempts to induce a securities transaction with a U.S. resident fiduciary would be required either to register with the Commission or effect transactions in accordance with Rule 15a–6(a)(3). We understand, however, that foreign resident clients of a U.S. resident fiduciary reasonably may not expect the U.S. broker-dealer regulatory requirements to apply to their transactions in foreign securities, in large part simply because the transactions are in foreign securities.

Accordingly, the proposed rule would permit a foreign broker-dealer to effect transactions in, or induce or attempt to induce the purchase or sale of, securities, with or for any U.S. person, other than a registered broker-dealer or a bank acting pursuant to an exception or exemption from the definition of ''broker'' or ''dealer,'' [130] that acts in a fiduciary capacity for an account of a foreign resident client. Consistent with our understanding of the expectations of foreign resident clients of a U.S. resident fiduciary, this proposed exemption would be available only to a foreign broker-dealer that conducts a foreign business.[131] As indicated above, this exemption would recognize that foreign resident clients would not expect that the broker-dealer through which a U.S. resident fiduciary is effecting transactions is regulated by the Commission. Moreover, under the proposed rule, the foreign broker-dealer would be required to obtain a written representation from the U.S. fiduciary that the account is managed in a fiduciary capacity for a foreign resident client.[132] This requirement is designed to ensure that the U.S. fiduciary is actually managing accounts for foreign resident clients.

The Commission seeks comment generally on the exemptions in paragraph (a)(4) of the proposed rule for transactions with certain U.S. entities. Are there entities or other categories of entities that should be included? The Commission particularly seeks comment on the proposed exemption for transactions with U.S. fiduciaries of accounts for foreign resident clients. Is the requirement that a foreign broker-dealer conduct a foreign business necessary or appropriate? Should the rule apply to U.S. fiduciaries for accounts other than those of foreign resident clients? The Commission requests comment on the definition of ''foreign resident client,'' in general, and the 85 percent foreign ownership threshold for entities not organized or incorporated under the laws of the United States, in particular. Should it be raised or lowered to better protect against regulatory arbitrage or to achieve its stated purposes? Commenters suggesting a different threshold or a different method for determining compliance with the threshold should explain why they would choose that threshold or method.

F. Familiarization With Foreign Options Exchanges

Over the years, foreign options exchanges have inquired regarding the

[127] *Cf.* Letter from Catherine McGuire, Chief Counsel, Division of Market Regulation, to Giovanni P. Prezioso, Cleary Gottlieb, Steen & Hamilton (Jan. 30, 1996).

[128] *See* proposed Rule 15a–6(b)(4).

[129] The Commission considers a person to be a control person if he or she directly or indirectly has the power to vote 25 percent or more of the voting securities or interests of an entity. *See, e.g.*, 17 CFR 240.12b–2. The concept of control, which is found in all the statutes administered by the Commission, varies to some degree between statutes. Although the Exchange Act does not define ''control,'' Rule 12b–2 under the Exchange Act defines ''control'' as ''the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.'' This definition has been found to apply to all Exchange Act control determinations. *In re Commonwealth Oil / Tesoro Petroleum Securities Litigation*, 484 F. Supp. 253, 268 (W.D. Tex. 1979) (the right to vote 25 percent or more of the voting securities or is entitled to 25 percent or more of the profits is presumed to control that company). The 85 percent threshold in proposed paragraph (b)(4)(iii) is designed to ensure that entities with U.S. control persons would not meet the proposed definition of ''foreign resident client.''

[130] *See* Sections 3(a)(4)(B), 3(a)(4)(E) and 3(a)(5)(C) of the Exchange Act. Foreign broker-dealers that want to effect transactions for registered broker-dealers or banks acting pursuant to certain exceptions or exemptions from the definition of ''broker'' or ''dealer'' can do so under the exemption in paragraph (a)(4)(i) of Rule 15a–6. *See* 17 CFR 240.15a–6(a)(4)(i).

[131] *See* proposed Rule 15a–6(b)(2)(ii).

[132] *See* proposed Rule 15a–6(a)(4)(vi)(B).

permissibility of limited activities designed to familiarize U.S. entities that have had prior actual experience with traded options in U.S. options markets, such as U.S. registered broker-dealers and certain U.S. institutional investors, with the existence and operations of, and options on foreign securities traded on, such foreign options exchanges. These exchanges have limited the activities conducted by their representatives, who may be located in a foreign office or in a representative office in the United States, and by their foreign broker-dealer members.

1. Exchange Act Section 15(a)

Because the activities by a representative of a foreign options exchange may constitute solicitation,[133] they raise potential registration concerns for foreign broker-dealer participants on the exchanges under Section 15(a).[134] This is in part because the activities are undertaken with the expectation that one or more U.S. registered broker-dealers or U.S. institutional investors will engage in foreign options transactions executed through the exchange, and thus trade through one or more foreign broker-dealer members of the exchange. Similarly, the activities of a foreign broker-dealer member of a foreign options exchange may constitute solicitation under the Commission's broad interpretation of solicitation.

The Commission recognizes the role of these activities in making certain U.S. investors aware of foreign options markets and the options on foreign securities traded on those markets. Accordingly, the Commission is proposing a new exemption to provide legal certainty for the foreign broker-dealer members and these foreign options exchanges. Paragraph (a)(5) of proposed Rule 15a–6 would allow a foreign broker-dealer that is a member of a foreign options exchange to effect transactions in options on foreign securities listed on that exchange for a qualified investor that has not otherwise been solicited by the foreign broker-dealer.[135] Under this exemption, a foreign broker-dealer, a foreign options exchange and representatives of the foreign options exchange could conduct certain activities or communicate with a qualified investor in a manner that might otherwise be considered a form of solicitation, as described below.[136] Transactions effected by or through the foreign broker-dealer with or for qualified investors that result from these activities or communications would not require registration or compliance with proposed Rule 15a–6(a)(3). However, while these activities would not necessarily constitute a form of solicitation, the Commission anticipates that given the broad interpretation of solicitation, it would be difficult, if not impractical, to conduct repeated transactions with the same qualified investor without the foreign broker-dealer engaging in some form of communication that would constitute solicitation. Therefore, the Commission anticipates that most transactions with qualified investors resulting from these activities or communications would need to be completed pursuant to proposed Rules 15a–6(a)(3).

Paragraph (a)(5)(i) of proposed Rule 15a–6 would set forth the limited activities in which a representative of a foreign options exchange located in a foreign office or a representative office in the United States may engage vis-à-vis qualified investors. The proposed rule would allow the representative of a foreign options exchange to communicate with persons that he or she reasonably believes are qualified investors regarding the foreign options exchange, the options on foreign securities traded on the foreign options exchange, and, if applicable, the foreign options exchange's ''OTC options processing service,'' as defined below.[137] Such communications could include programs and seminars in the United States.

Proposed Rule 15a–6(b)(6) would define an ''OTC options processing service'' as ''a mechanism for submitting an options contract on a foreign security that has been negotiated and completed in an over-the-counter transaction to a foreign options exchange so that the foreign options exchange may replace that contract with an equivalent standardized options contract that is listed on the foreign options exchange and that has the same terms and conditions as the over-the-counter options.'' By utilizing an OTC options processing service, qualified investors would be able to take advantage of the flexible nature of the OTC options market, while realizing certain efficiencies and benefits available in an exchange-traded market. In particular, qualified investors would have greater opportunities to close out options positions. In a typical OTC options transaction, a party must either negotiate with its counterparty to close out the trade or enter into an offsetting transaction to reduce its risk. In addition, OTC options processing services would provide a means for qualified investors to reduce other risks that arise in trading in the OTC options market, including credit risks, liquidity risks, legal risks and operational risks. By using an OTC options processing service, qualified investors would be able to access the benefits available in the OTC options market while taking advantage of the benefits and decreased risks available in the exchange-traded market.

The proposed rule would also permit a representative of a foreign options exchange to provide persons that the representative of the foreign options exchange reasonably believes are qualified investors with a disclosure document that provides an overview of the foreign options exchange and the options on foreign securities traded on that exchange, including the differences from standardized options in the U.S. options market and special factors relevant to transactions by U.S. entities in options on the foreign options exchange.[138] In addition, a representative of a foreign options exchange could make available to persons that the representative of the foreign options exchange reasonably believes are qualified investors, solely upon the request of the investor, a list of participants on the foreign options exchange permitted to take orders from the public and any U.S. registered broker-dealer affiliates of such participants.[139] Moreover, paragraph (5)(iii) would allow the foreign exchange to make available to qualified investors, through the foreign broker-dealer, the exchange's OTC options processing service.[140]

In proposing to limit these activities, the proposed rule is designed to ensure that a foreign options exchange and its representatives do not engage in solicitation on behalf of a particular foreign broker-dealer or limited group of particular foreign broker-dealers.

Paragraph (a)(5)(ii) of the proposed rule would set forth the activities in which a foreign broker-dealer could engage in connection with transactions effected on a foreign options exchange

[133] For a discussion of the Commission's broad interpretation of solicitation, *see* Parts II.A. and III.B., *supra*.

[134] The fact that the activities are conducted by the exchanges through their representatives does not necessarily eliminate the registration concerns of the participants on those exchanges. *See* Exchange Act Section 20(b), 17 U.S.C. 78t(b) (''It shall be unlawful for any person, directly or indirectly, to do any act or thing which it would be unlawful for such person to do under the provisions of this title or any rule or regulation thereunder through or by means of any other person'').

[135] *See* proposed Rule 15a–6(a)(5).

[136] *See* proposed Rules 15a–6(a)(5)(i)–(iii).

[137] *See* proposed Rule 15a–6(a)(5)(i)(A).

[138] *See* proposed Rule 15a–6(a)(5)(i)(B).

[139] *See* proposed Rule 15a–6(a)(5)(i)(C).

[140] *See* proposed Rule 15a–6(a)(5)(iii).

of which it is a member. A foreign broker-dealer would be permitted to make available to qualified investors the foreign options exchange's OTC options processing service.[141] A foreign broker-dealer would also be permitted to provide qualified investors, in response to an otherwise unsolicited inquiry concerning foreign options traded on the foreign options exchange, with a disclosure document that provides an overview of the foreign options exchange and the options on foreign securities traded on that exchange, including the differences from standardized options in the U.S. domestic options market and special factors relevant to transactions by U.S. entities in options on that exchange.[142]

2. Exchange Act Sections 5 and 6

Section 5 of the Exchange Act makes it ''unlawful for any broker, dealer, or exchange, directly or indirectly, to make use of the mails or any means or instrumentality of interstate commerce for the purpose of using any facility of an exchange with or subject to the jurisdiction of the United States to effect any transaction in a security, or to report any such transaction,'' unless such exchange is registered under Section 6 of the Exchange Act or exempt from such registration.[143] As described above, paragraph (a)(5) of proposed Rule 15a–6 would establish the limited activities and communications in which a representative of a foreign options exchange located in a foreign office or a representative office in the United States may engage vis-à-vis qualified investors,[144] and in which a foreign broker-dealer may engage in connection with transactions effected on a foreign options exchange in which it is a member.[145] In addition, a foreign exchange could make available to qualified investors, through a foreign broker-dealer, the exchange's OTC options processing service.[146]

The Commission is proposing to provide interpretive guidance that a foreign exchange would not be required to register as a national securities exchange under Section 6 of the Exchange Act or be exempt from such registration if the foreign exchange, its representatives, or its foreign broker-dealer members engaged in the limited activities and communications described in proposed paragraph (a)(5) of Rule 15a–6. The Commission's proposed interpretation is based on its preliminary view that, although a foreign exchange's OTC options processing service may be a facility of an exchange,[147] the OTC options processing service would not effect any transaction in a security or report any such transaction.[148] Accordingly, such activity would not trigger the registration requirements of Section 6 of the Exchange Act.[149]

The Commission seeks comment on its proposed interpretation that a foreign exchange would not be required to register as a national securities exchange under Section 6 of the Exchange Act if the foreign exchange, its representatives, or its foreign broker-dealer members engage in the limited activities and communications described in paragraph (a)(5) of proposed Rule 15a–6. Are any additional conditions necessary or are there other interpretive issues relating to the circumstances under which a foreign exchange would be required to register under Section 6 of the Exchange Act, or otherwise obtain an exemption from such registration requirements, that the Commission should address?

3. Exchange Act Section 17A

Under proposed Rule 15a–6(a)(5), qualified investors would not become direct members of, or participants in, the foreign options exchange or any associated foreign clearing organization. Further, the foreign options exchange would not trade nor would the foreign clearing organization clear and settle options on U.S. securities for a foreign broker-dealer member or participant relying on proposed paragraph (a)(5) for the transaction. The foreign broker-dealer member or participant would execute transactions in options on foreign securities, or submit an options contract on foreign securities, and the foreign clearing organization would clear and settle these transactions for its foreign broker-dealer participants in the same manner as any other transaction executed on the foreign options exchange.

Section 17A(b)(1) of the Exchange Act prohibits any clearing agency from directly or indirectly making ''use of the mails or any means or instrumentality of interstate commerce to perform the functions of a clearing agency with respect to any security (other than an exempted security),'' unless it is registered with the Commission.[150] The Commission may conditionally or unconditionally exempt any clearing agency if the Commission finds that such exemption is consistent with the public interest, the protection of investors and the purposes of Section 17A.[151]

Previously, the Commission has required foreign clearing organizations to obtain an exemption from clearing agency registration only when the foreign clearing organization provides clearance and settlement services for U.S. securities directly to U.S. entities. For example, the Commission granted Euroclear and Clearstream (formerly Cedel Bank) exemptions from clearing agency registration in order that they could provide clearance and settlement services for U.S. government securities to their U.S. participants.[152] Because only the foreign broker-dealer would have direct access to the foreign clearing organization to clear and settle foreign securities transactions under proposed Rule 15a–6(a)(5), the Commission does not believe that relief under Section 17A of the Exchange Act would be necessary. The Commission solicits comment on whether any interpretive guidance is needed under Section 17A with respect to activities under proposed Rule 15a–6(a)(5). If so, what?

4. Securities Act

Foreign option transactions that are effected through the facilities of a foreign exchange will generally involve the offer and sale of a security by an issuer of the security.[153] As a result,

[141] *See* proposed Rule 15a–6(a)(5)(ii)(A).

[142] *See* proposed Rule 15a–6(a)(5)(ii)(B). Exchange Act Rule 9b–1 requires an options market to file with the Commission an options disclosure document containing the information specified in Rule 19b–1(c). ''Options markets'' are defined in Rule 19b–1 to include foreign securities exchanges. *See* Exchange Act Rule 19b–1(a)(1), 17 CFR 240.19b–1(a)(1). The Commission would not view the provision of the options disclosure document, which contains, among other things, a summary of the instruments traded and the mechanics of trading on that market, as a ''research report'' under proposed Rule 15a–6(a)(2). *See* Parts II.B. and III.C., *supra*.

[143] 15 U.S.C. 78e.

[144] *See* proposed Rule 15a–6(a)(5)(i).

[145] *See* proposed Rule 15a–6(a)(5)(ii).

[146] *See* proposed Rule 15a–6(a)(5)(iii).

[147] *See* Section 3(a)(2) of the Exchange Act, 15 U.S.C. 78c(a)(2) (defining ''facility'' of an exchange).

[148] *See* note 143 and accompanying text, *supra* (discussing Section 5 of the Exchange Act, which prohibits a broker, dealer, or exchange from using a facility of an exchange to effect a transaction in a security, or to report any such transaction, unless such exchange is registered under Section 6 of the Exchange Act).

[149] *See* Section 3(a)(1) of the Exchange Act, 15 U.S.C. 78c (defining ''exchange'') and Rule 3b–16 under the Exchange Act, 17 CFR 240–3b–16 (further elaborating on the definition of ''exchange'' contained in the Exchange Act).

[150] 15 U.S.C. 78q–1(b)(1).

[151] *Id.*

[152] *See* Exchange Act Release Nos. 43775 (Dec. 28, 2000), 66 FR 819 (order exempting Euroclear Bank from clearing agency registration) and 39643 (Feb. 18, 1998), 63 FR 8232 (order exempting Euroclear Bank's predecessor, Morgan Guaranty Trust Company, as operator of the Euroclear system, from clearing agency registration) and Exchange Act Release No. 38328 (Feb. 24, 1997), 62 FR 9225 (order exempting Clearstream Bank, formerly Cedel Bank, from clearing agency registration).

[153] With exchange traded options, the clearing house is the issuer of the option security. *See*

unless the foreign options were registered under the Securities Act, foreign option transactions involving U.S. persons would be required to come within an exemption from registration. To the extent that the activities undertaken by foreign options exchange in the United States can be deemed to constitute offers of foreign options under the Securities Act, such activities must also be undertaken in a fashion that is consistent with the requirements of the applicable exemption.[154]

5. Request for Comment

The Commission seeks comment on the proposed exemption in paragraph (a)(5) for transactions effected by a foreign broker-dealer on a foreign options exchange of which it is a member. Should the Commission require a foreign broker-dealer or a representative of a foreign options exchange to determine that the persons with whom the representative communicates or otherwise provides information under proposed paragraphs (a)(5)(i)(A)–(C) are, in fact, qualified investors? Should the exemption be limited to unsolicited transactions? As a practical matter, because of the broad interpretation of solicitation, would foreign broker-dealers effecting transactions with qualified investors that have been approached by the representatives of a foreign options exchange effect these transactions in reliance on proposed paragraph (a)(3) of Rule 15(a)(6)? If not, should the proposed exemption permit foreign broker-dealers to engage in additional limited solicitation activities, such as the types of contacts that would be expected in an ongoing customer relationship? In general, should foreign representatives of foreign options exchanges or foreign options exchanges be permitted to engage in any other activities under the proposed rule? If so, what? Given the purpose of the exemption to allow familiarization activities for foreign options exchanges, are there other types of markets for which it would be appropriate to permit familiarization activities? If so, which markets and what should the permissible range of activities be? Should they be broader or narrower than the permissible range of activities for foreign options exchanges? If so, why? Commenters are requested to explain their views.

G. Scope of the Proposed Exemption

When we adopted Rule 15a–6 in 1989, the Commission had authority, under Section 15(a)(2) of the Exchange Act, only to conditionally or unconditionally exempt from the broker-dealer registration requirements of Section 15(a)(1) any broker-dealer or class of broker-dealers, by rule or order, as it deems consistent with the public interest and the protection of investors.[155] However, many of the statutory and regulatory provisions under the Exchange Act actually are applicable by their terms to broker-dealers regardless of their registration status.[156] To provide foreign broker-dealers relying on the exemptions in Rule 15a–6 with relief from these provisions, the Commission stated in the 1989 Adopting Release, ''Nevertheless, the staff would not recommend that the Commission take enforcement action against foreign broker-dealers for want of compliance with those provisions, with the exception of sections 15(b)(4) and 15(b)(6), if the foreign broker-dealers were exempt from broker-dealer registration under the Rule.'' [157]

Since 1996, the Commission has had general exemptive authority under Section 36 of the Exchange Act to conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Exchange Act or any rule or regulation thereunder, by rule, regulation or order, to the extent that such exemption is necessary or appropriate in the public interest and is consistent with the protection of investors.[158]

The Commission proposes to amend Rule 15a–6 to exempt foreign broker-dealers from not only the registration requirements of Section 15(a)(1) or 15B(a)(1) of the Exchange Act, but also from the reporting and other requirements of the Exchange Act (other than Sections 15(b)(4) and 15(b)(6)), and the rules and regulations thereunder, that apply specifically to a broker-dealer solely by virtue of its status as a broker or dealer rather than because of its registration with the Commission.

Under the proposed rule, as under the current rule, however, foreign broker-dealers would not be exempt from provisions of the Exchange Act, and the rules and regulations thereunder, that are not specific to broker-dealers, such as Section 10(b) of the Exchange Act, or Rule 10b–5 thereunder.[159] Such rules apply to ''persons'' regardless of their registration status, and thus apply equally to registered broker-dealers, unregistered broker-dealers and non-broker-dealers. We also do not propose to exempt foreign broker-dealers from Exchange Act Sections 15(b)(4) and 15(b)(6), which give the Commission the authority to sanction broker-dealers and persons associated with broker-dealers, because these sections provide the Commission with flexibility to impose a bar against or place other limitations on associated persons or place limitations on broker-dealers in the circumstances specified in these sections.

As discussed more fully below with respect to each of the exemptions in the proposed rule, the Commission preliminarily believes that exempting foreign broker-dealers from the registration requirements of Sections 15(a)(1) and 15B(a)(1) of the Exchange Act and the reporting and other requirements of the Exchange Act (other than Sections 15(b)(4) and 15(b)(6)), and the rules and regulations thereunder, that apply specifically to a broker-dealer that is not registered with the Commission solely by virtue of its status as a broker or dealer would be necessary or appropriate in the public interest, and would be consistent with the protection of investors.

1. Proposed Rule 15a–6(a)(2)

As discussed above, proposed rule 15a–6(a)(2) would permit a foreign broker-dealer to provide research reports to qualified investors, but not otherwise induce or attempt to induce the purchase or sale of any security by qualified investors.[160] Based on conversations with industry participants, we understand that foreign broker-dealers rarely rely on current Rule 15a–6(a)(2). This is in part because of the limitations on solicitation, as well as the requirement that if a foreign broker-dealer has a relationship with a U.S. registered broker-dealer that satisfies the requirement of paragraph (a)(3) of the current rule, any

Securities Act Release No. 8171 (Dec. 23, 2002), 68 FR 188, 188 (Jan. 2, 2003).

[154] For example, to the extent that reliance is based on Securities Act Section 4(2), the activities of the foreign options exchange must not constitute a public offering of the securities.

[155] *See* 15 U.S.C. 78o(a)(2); *see also* Section 15B(a)(4) of the Exchange Act, 15 U.S.C. 78o–4(a)(4) (giving the Commission similar authority with respect to municipal securities dealers).

[156] *See* 1989 Adopting Release, 54 FR at 30015 n.22 (''*E.g.*, sections 15(b)(4) and 15(b)(6) of the Exchange Act, 15 U.S.C. 78o(b)(4) and 78o(b)(6); Rules 15c3–1, 15c3–3, 17a–3, 17a–4, and 17a–5, 17 CFR 240.15c3–1, 15c3–3, 17a–3, 17a–4, and 17a–5'').

[157] *See* 1989 Adopting Release, 54 FR at 30015 n.22.

[158] *See* 15 U.S.C. 78mm; *see also* Capital Markets Efficiency Act of 1996, Sec. 105(b), Pub. Law 104–290, 110 Stat. 3416 (1996) (adding Section 36 to the Exchange Act).

[159] The proposed rule also would not affect any obligations a foreign broker-dealer may have under any other law, including the Securities Act.

[160] *See* Part III.C., *supra*.

transactions with the foreign broker-dealer in securities discussed in the research reports must be effected pursuant to the provisions of paragraph (a)(3).[161]

Given the *de minimis* volume of transactions that likely would be conducted,[162] and the level of financial sophistication of the investors that could receive the research reports under this proposed exemption, as well as the fact that the foreign broker-dealer would not otherwise be permitted to induce or attempt to induce the purchase or sale of any security by those investors under the proposed exemption, the Commission preliminarily believes that it would be necessary or appropriate in the public interest, and would be consistent with the protection of investors, to exempt foreign broker-dealers relying on paragraph (a)(2) of the proposed rule from the registration requirements of Sections 15(a)(1) and 15B(a)(1) of the Exchange Act and the reporting and other requirements of the Exchange Act (other than Sections 15(b)(4) and 15(b)(6)), and the rules and regulations thereunder, that apply specifically to a broker-dealer that is not registered with the Commission solely by virtue of its status as a broker or dealer.

The Commission solicits comment on whether it would be necessary or appropriate in the public interest, and consistent with the protection of investors, to exempt foreign broker-dealers relying on paragraph (a)(2) of the proposed rule from such rules and requirements. If not, which provisions or rules should apply and why?

2. Proposed Rule 15a–6(a)(3)

a. Exemption (A)(*1*)

As discussed above, foreign broker-dealers relying on proposed Exemption (A)(*1*) under Rule 15a–6(a)(3) would be required to conduct a foreign business.[163] The proposed rule would define ''foreign business'' to mean the business of a foreign broker-dealer with qualified investors and foreign resident clients [164] where at least 85% of the aggregate value of the securities purchased or sold in transactions conducted pursuant to both paragraphs (a)(3) and (a)(4)(vi) of the proposed rule by the foreign broker-dealer, calculated on a rolling two-year basis, is derived from transactions in foreign securities, as defined above.[165] As explained above, the Commission believes that making Exemption (A)(*1*) available only to a foreign broker-dealer conducting a foreign business would provide U.S. investors increased access to foreign securities and markets without creating opportunities for regulatory arbitrage vis-à-vis U.S. securities markets because the foreign broker-dealer's business in U.S. securities would be limited.

Given the requirement that foreign broker-dealers conduct a foreign business and the sophistication of qualified investors, as well as the other investor protections in the proposed rule, the Commission preliminarily believes that it would be necessary or appropriate in the public interest, and would be consistent with the protection of investors to exempt foreign broker-dealers relying on Exemption (A)(*1*) of the proposed rule from the registration requirements of Sections 15(a)(1) and 15B(a)(1) of the Exchange Act and the reporting and other requirements of the Exchange Act (other than Sections 15(b)(4) and 15(b)(6)), and the rules and regulations thereunder, that apply specifically to a broker-dealer that is not registered with the Commission solely by virtue of its status as a broker or dealer.

The Commission solicits comment on whether it would be necessary or appropriate in the public interest, and consistent with the protection of investors, to exempt foreign broker-dealers relying on Exemption (A)(*1*) from such rules and requirements. If not, which rules should apply and why? Alternatively, and as under current Rule 15a–6(a)(3), should the intermediating U.S. registered broker-dealer be required to comply with certain rules in lieu of the foreign broker-dealer? If so, which rules and why? Should the requirements differ based on whether the securities are U.S. securities or foreign securities and where the transactions are executed? Would exempting foreign broker-dealers from such rules and regulations place U.S. registered broker-dealers at a competitive disadvantage?

b. Exemption (A)(*2*)

Under proposed Exemption (A)(*2*), qualified investors that have an account with a U.S. registered broker-dealer would have access to foreign broker-dealers regardless of the types of securities that are involved. Foreign broker-dealers relying on proposed Exemption (A)(*2*) would be permitted to effect transactions in securities, provided, among other things, that a U.S. registered broker-dealer acts as custodian for any resulting transactions.[166] As a result, a U.S. registered broker-dealer would hold the funds and securities of the qualified investor and be subject to the Commission's rules relating to the safeguarding of customer assets, such as Exchange Act Rule 15c3–3. As with proposed Exemption (A)(*1*), proposed Exemption (A)(*2*) would be limited to transactions with qualified investors, which we believe are sophisticated investors that can be expected to understand the risk of dealing with foreign broker-dealers that are not regulated by the Commission.

Given the requirement that a U.S. registered broker-dealer maintain custody of qualified investors' funds and securities from any resulting transactions and the sophistication of qualified investors, as well as the other investor protections in the proposed rule, the Commission preliminarily believes that it would be necessary or appropriate in the public interest, and would be consistent with the protection of investors, to exempt foreign broker-dealers relying on Exemption (A)(*2*) of the proposed rule from the registration requirements of Sections 15(a)(1) and 15B(a)(1) of the Exchange Act and the reporting and other requirements of the Exchange Act (other than Sections 15(b)(4) and 15(b)(6)), and the rules and regulations thereunder, that apply specifically to a broker-dealer that is not registered with the Commission solely by virtue of its status as a broker or dealer.

The Commission solicits comment on whether it would be necessary or appropriate in the public interest, and consistent with the protection of investors, to exempt foreign broker-dealers relying on Exemption (A)(*2*) from such rules and requirements. If not, which rules should apply and why? Alternatively, as under current Rule 15a–6(a)(3), should the intermediating U.S. registered broker-dealer be required to comply with certain rules in lieu of the foreign broker-dealer? If so, which rules and why? Should the requirements differ based on whether the securities are U.S. securities or foreign securities and where the transactions are executed? Would exempting foreign broker-dealers from such rules and regulations place U.S. registered broker-dealers at a competitive disadvantage?

3. Proposed Rule 15a–6(a)(4)

As explained above, paragraph (a)(4) of proposed Rule 15a–6 would provide an additional exemption for foreign broker-dealers that effect transactions

[161] *See* 17 CFR 240.15a–6(a)(2)(iii).

[162] This estimate is based on information the staff obtained in discussions with industry representatives.

[163] *See* Part III.D.1.a., *supra*.

[164] *See* Part III.E., *supra*.

[165] *See* proposed Rule 15a–6(b)(3).

[166] *See* Part III.D.1.b., *supra*.

for certain classes of investors, namely, U.S. persons that act in a fiduciary capacity for an account of a foreign resident client.[167]

Because of the nature and/or location of these persons, the Commission preliminarily believes that it would be necessary or appropriate in the public interest, and would be consistent with the protection of investors, to exempt foreign broker-dealers relying on paragraph (a)(4)(vi) of the proposed rule from the registration requirements of Sections 15(a)(1) and 15B(a)(1) of the Exchange Act and the reporting and other requirements of the Exchange Act (other than Sections 15(b)(4) and 15(b)(6)), and the rules and regulations thereunder, that apply specifically to a broker-dealer that is not registered with the Commission solely by virtue of its status as a broker or dealer.

The Commission solicits comment on whether it would be necessary or appropriate in the public interest, and be consistent with the protection of investors, to exempt foreign broker-dealers relying on paragraph (a)(4)(vi) of the proposed rule from such rules and requirements. If not, which rules should apply and why?

4. Proposed Rule 15a–6(a)(5)

As explained above, paragraph (a)(5) of proposed Rule 15a–6 would allow a foreign broker-dealer that is a member of a foreign options exchange to effect transactions in options on foreign securities listed on that exchange for a qualified investor that has not otherwise been solicited by the foreign broker-dealer.[168] Under this exemption, a foreign broker-dealer, a foreign options exchange and representatives of the foreign options exchange could conduct certain activities or communicate with a qualified investor in a manner that might otherwise be considered a form of solicitation, as described above.[169] Transactions effected by or through the foreign broker-dealer with or for qualified investors that result from these activities or communications would not require registration or, in some situations, compliance with proposed Rule 15a–6(a)(3). However, while these activities would not necessarily constitute a form of solicitation, the Commission anticipates that given the broad interpretation of solicitation, it would be difficult, if not impractical, to conduct repeated transactions with the same qualified investor without a foreign broker-dealer engaging in some form of communication that would constitute solicitation. Therefore, the Commission anticipates that most transactions with qualified investors resulting from these activities or communications would need to be completed pursuant to proposed Rules 15a–6(a)(3).

Hence, for the reasons given above in the discussion of paragraphs (a)(2) and (a)(3) of the proposed rule, the Commission preliminarily believes that it would be necessary or appropriate in the public interest, and would be consistent with the protection of investors to exempt foreign broker-dealers relying on paragraph (a)(5) of the proposed rule from the registration requirements of Sections 15(a)(1) and 15B(a)(1) of the Exchange Act and the reporting and other requirements of the Exchange Act (other than Sections 15(b)(4) and 15(b)(6)), and the rules and regulations thereunder, that apply specifically to a broker-dealer that is not registered with the Commission solely by virtue of its status as a broker or dealer.

The Commission solicits comment on whether it would be necessary or appropriate in the public interest, and be consistent with the protection of investors, to exempt foreign broker-dealers relying on paragraph (a)(5) of the proposed rule from such rules and requirements. If not, which rules should apply and why?

IV. Preliminary Findings

Section 15(a)(2) of the Exchange Act provides that the Commission, by rule or order, as it deems consistent with the public interest and the protection of investors, may conditionally or unconditionally exempt from Section 15(a)(1) any broker or dealer or class of brokers or dealers. Section 36 of the Exchange Act provides general exemptive authority to the Commission to exempt any person or class of persons or transactions from any provision of the Exchange Act, to the extent that such exemption is necessary or appropriate in the public interest and is consistent with the protection of investors. As described in Part III.G., above, the Commission preliminarily believes that the proposed exemptions would be necessary or appropriate in the public interest and would be consistent with the protection of investors.

V. General Request for Comment

In addition to the specific requests for comment above, the Commission seeks comment generally on all aspects of the proposed amendments to Rule 15a–6 under the Exchange Act. The Commission anticipates that all prior staff no-action relief under Rule 15a–6 would be superseded if the Commission were to adopt this proposed rule and interpretive guidance. Are there additional issues stemming from the 1989 Adopting Release or related staff guidance that are not addressed in the proposal and that should be addressed by this rule or interpretive guidance? Commenters are invited to provide empirical data to support their views. Comments are of the greatest assistance to our rulemaking initiatives if accompanied by supporting data and analysis of the issues addressed, and if accompanied by alternative suggestions to our proposals when appropriate. Commenters are also welcome to offer their views on any other issues raised by the proposed amendments to Rule 15a–6.

VI. Administrative Law Matters

A. Paperwork Reduction Act Analysis

Certain provisions of current Rule 15a–6 contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995.[170] The Commission has previously submitted these information collections to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The revised collections of information in the proposed amendments would impose certain burdens on U.S. registered broker-dealers, foreign broker-dealers and U.S. persons acting as fiduciaries as described in proposed Rule 15a–6(a)(4)(vi). The Commission has submitted the revised collections of information, entitled ''Rule 15a–6 under the Securities Exchange Act of 1934—Exemption of Certain Foreign Brokers or Dealers'' (OMB control No. 3235–0371), to the OMB for review. 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.[171]

1. Related Collections of Information Under Proposed Paragraphs (a)(3)(i)(B) and (C) and (a)(3)(iii)(C) and (D)

Current paragraph (a)(3)(ii)(B) of Rule 15a–6 requires a U.S. registered broker-dealer to determine that the foreign associated persons of a foreign broker-dealer effecting transactions with U.S. institutional investors or major U.S. institutional investors are not subject to a statutory disqualification as defined in Section 3(a)(39) of the Exchange Act, or certain substantially equivalent foreign

[167] *See* Part III.E., *supra*.

[168] *See* Part III.F., *supra*.

[169] *See* proposed Rules 15a–6(a)(5)(i)–(iii).

[170] 44 U.S.C. 3501 *et seq*.

[171] *See* 44 U.S.C. 3512.

disciplinary actions. As described above, because the foreign equivalents of statutory disqualification are now included in Section 3(a)(39), the proposed rule would no longer separately describe them.[172] In addition, the proposed rule would place the burden on the foreign broker-dealer to determine that its foreign associated persons effecting transactions with a qualified investor are not subject to a statutory disqualification as defined in Section 3(a)(39) of the Exchange Act.[173]

Current paragraph (a)(3)(iii)(C) of Rule 15a–6 requires a U.S. registered broker-dealer to obtain from the foreign broker-dealer, with respect to each foreign associated person, the types of information specified in Rule 17a–3(a)(12) under the Exchange Act,[174] provided that the information required by paragraph (a)(12)(i)(D) of that rule includes sanctions imposed by foreign securities authorities, exchanges, or associations, including statutory disqualification.[175] Proposed paragraph (a)(3)(i)(C) of Rule 15a–6 would require that the foreign broker-dealer have such information regarding its foreign associated persons in its files.

Proposed paragraphs (a)(3)(iii)(C) and (D) of Rule 15a–6 would require that a registered broker-dealer obtain and record a representation from the foreign broker-dealer that the foreign broker-dealer has determined that its foreign associated persons effecting transactions with a qualified investor are not subject to a statutory disqualification as defined in Section 3(a)(39) of the Exchange Act and has the information required by proposed paragraph (a)(3)(i)(C) of Rule 15a–6 in its files.

a. Collection of Information

Proposed paragraphs (a)(3)(i)(B) and (C) and (a)(3)(iii)(C) and (D) of Rule 15a–6 all would require ''collections of information,'' as that term is defined in 44 U.S.C. 3502(3). Proposed paragraph (a)(3)(i)(B) would require a foreign broker-dealer to make a determination that its foreign associated persons effecting transactions with a qualified investor are not subject to a statutory disqualification as defined in Section 3(a)(39) of the Exchange Act.[176] Proposed paragraph (a)(3)(i)(C) would require that the foreign broker-dealer have in its files information specified in Rule 17a–3(a)(12) under the Exchange Act, including information related to sanctions imposed by foreign securities authorities, foreign exchanges, or foreign associations.[177] Thus, each requires a collection of information by the foreign broker-dealer.

Proposed paragraph (a)(3)(iii)(C) would require that a U.S. registered broker-dealer obtain a representation from the foreign broker-dealer that the foreign broker-dealer has made the determinations that would be required by proposed paragraph (a)(3)(i)(B) and has in its files the information that would be required by proposed paragraph (a)(3)(i)(C). Proposed paragraph (a)(3)(iii)(C) therefore would require a collection of information by both the foreign broker-dealer and the U.S. registered broker-dealer in that the foreign broker-dealer must provide the representation and the U.S. registered broker-dealer must obtain that representation.

Proposed paragraph (a)(3)(iii)(D) would require a U.S. registered broker-dealer to maintain a record of the representations it obtains pursuant to proposed paragraph (a)(3)(iii)(C). This proposed paragraph would require a collection of information by the U.S. registered broker-dealer.

b. Proposed Use of Information

The collections of information under proposed paragraphs (a)(3)(i)(B) and (C) and proposed paragraphs (a)(3)(iii)(C) and (D) are intended to protect U.S. investors from contacts with foreign associated persons with a disciplinary history.

c. Respondents

As discussed above, proposed paragraphs (a)(3)(i)(B) and (C) and proposed paragraphs (a)(3)(iii)(C) and (D) of Rule 15a–6 would require collections of information by both foreign broker-dealers and U.S. registered broker-dealers. All foreign broker-dealers that take advantage of the exemption from registration under the proposed rule would be required to comply with proposed paragraphs (a)(3)(i)(B) and (C) and proposed paragraph (a)(3)(iii)(C). The Commission estimates that approximately 700 foreign broker-dealers would take advantage of the exemption from registration under the proposed rule and therefore be subject to the collection of information requirements in proposed paragraphs (a)(3)(i)(B) and (C) and proposed paragraph (a)(3)(iii)(C).[178]

Similarly, all U.S. registered broker-dealers engaged by foreign broker-dealers to assume the responsibilities of a U.S. registered broker-dealer under the proposed rule, under either exemption, would be required to comply with proposed paragraphs (a)(3)(iii)(C) and (D). The Commission estimates that approximately 40 U.S. registered broker-dealers would be engaged by foreign broker-dealers to assume the responsibilities under Exemption (A)(*1*) and approximately 18 U.S. registered broker-dealers would be engaged by foreign broker-dealers to assume the responsibilities under Exemption (A)(*2*) under the proposed rule, for a total of approximately 58 U.S. registered broker-dealers assuming the responsibilities under paragraph (a)(3)(iii) and therefore be subject to the collection of information requirements in proposed paragraphs (a)(3)(iii)(C) and (D).

d. Reporting and Recordkeeping Burden

The Commission estimates for the purposes of proposed paragraph (a)(3)(i)(B) that each of the approximately 700 foreign broker-dealer respondents would employ approximately 5 foreign associated persons that would effect transactions with qualified investors and would spend approximately 10 hours per year determining that these foreign associated persons are not subject to a statutory disqualification as defined in Section 3(a)(39) of the Exchange Act.[179] The Commission also estimates for the purposes of proposed paragraph (a)(3)(i)(C) that each of the

[172] *See* Part III.D.3., *supra*; *see also* proposed Rule 15a–6(a)(3)(i)(B).

[173] *See* proposed Rule 15a–6(a)(3)(i)(B).

[174] *See* Part III.D.3., *supra*.

[175] *See* 17 CFR 240.15a–6(a)(3)(iii)(C).

[176] *See* proposed Rule 15a–6(a)(i)(B).

[177] *See* proposed Rule 15a–6(a)(i)(C).

[178] Based on information the staff obtained in discussions with industry representatives, the Commission estimates that approximately 40 U.S. registered broker-dealers would serve as U.S. registered broker-dealers under Exemption (A)(*1*) under the proposed rule. The Commission estimates that each of these 40 U.S. registered broker-dealers would do so for an average of 10 foreign broker-dealers, so that an estimated total of 400 foreign broker-dealers would utilize Exemption (A)(*1*) under the proposed rule. The Commission also estimates based on information the staff obtained in discussions with industry that approximately 18 U.S. registered broker-dealers would be engaged under Exemption (A)(*2*) by foreign broker-dealers relying on the exemption provided by paragraph (a)(3)(iii)(A)(*2*) of the proposed rule. The Commission believes that Exemption (A)(*2*) under the proposed rule would be utilized by approximately 300 foreign broker-dealers (an average of 16.67 per each of the 18 U.S. registered broker-dealers acting under Exemption (A)(*2*)—assuming an even distribution of foreign broker-dealers per U.S. registered broker-dealer operating under the exemption, some U.S. registered broker-dealers would do so for 16 foreign broker-dealers and some would do so for 17 foreign broker-dealers). Therefore, the Commission estimates that a total of 700 foreign broker-dealers would take advantage of one or both exemptions from registration under the proposed rule.

[179] As noted above, the bases for these estimates come from information the staff obtained in discussions with industry representatives. Unless otherwise indicated, each of the Commission's estimates used for the purposes of calculating the number of respondents or the burden imposed upon those respondents is based on such discussions.

approximately 700 foreign broker-dealer respondents would spend approximately 10 hours per year complying with the terms of that proposed paragraph. Thus, the Commission estimates for the purposes of proposed paragraph (a)(3)(iii)(C) that each of the approximately 700 foreign broker-dealer respondents would spend approximately 5 hours per year providing representations to U.S. registered broker-dealers that they have complied with proposed paragraphs (a)(3)(i)(B) and (C). Therefore, the annual burden imposed by proposed paragraphs (a)(3)(i)(B) and (C) and proposed paragraph (a)(3)(iii)(C) on each of the 700 foreign broker-dealers would be approximately 25 hours for an aggregate annual burden on all foreign broker-dealers of 17,650 hours (700 foreign broker-dealers × 25 hours per foreign broker-dealer).

The Commission estimates for the purposes of proposed paragraphs (a)(3)(iii)(C) and (D) that each U.S. registered broker-dealer acting under Exemption (A)(*1*) would spend approximately 5 hours each year obtaining and recording representations required by proposed paragraphs (a)(3)(iii)(C) and (D). Similarly, the Commission estimates that each U.S. registered broker-dealer acting under Exemption (A)(*2*) would spend approximately 8 hours each year obtaining and recording representations required by proposed paragraphs (a)(3)(iii)(C) and (D). Thus, the aggregate annual burden imposed by proposed paragraphs (a)(3)(i)(C) and (D) on all U.S. registered broker-dealers would be approximately 344 hours (40 U.S. registered broker-dealers acting under Exemption (A)(*1*) multiplied by 5 hours per broker-dealer plus 18 U.S. registered broker-dealers acting under Exemption (A)(*2*) multiplied by 8 hours per broker-dealer).

e. Collection of Information Is Mandatory

These collections of information would be mandatory for foreign broker-dealers that choose to rely on the exemptions in paragraph (a)(3) of the proposed rule and U.S. registered broker-dealers that intermediate transactions for foreign broker-dealers that choose to rely on the exemptions in paragraph (a)(3) of the proposed rule.

f. Confidentiality

Proposed paragraph (a)(3)(i)(C) would require foreign broker-dealers to have in their files the type of information specified in Rule 17a–3(a)(12) under the Exchange Act, provided that the information required by paragraph (a)(12)(i)(D) of Rule 17a–3 shall include information relating to sanctions imposed by foreign securities authorities, foreign exchanges or foreign associations, including without limitation those described in Section 3(a)(39) of the Exchange Act. Proposed paragraph (a)(3)(iii)(D) would require U.S. registered broker-dealers to maintain a written record of the representations obtained from foreign broker-dealers, as required by proposed paragraph (a)(3)(iii)(C).

All information related to transactions with qualified investors, whether kept by U.S. registered broker-dealers or foreign broker-dealers, would be subject to review and inspection by the Commission and its representatives as required in connection with examinations, investigations and enforcement proceedings. Such information is not required to be disclosed to the public and will be kept confidential by the Commission.

g. Record Retention Period

Proposed paragraphs (a)(3)(i)(B) and (C) and proposed paragraphs (a)(3)(iii)(C) and (D) would not include record retention periods. However, the U.S. registered broker-dealers would have to retain the representations for the period specified under 17 CFR 240.17a–4(b)(7), which requires broker-dealers to preserve all written agreements they enter into relating to their business for a period of not less than three years, the first two years in an easily accessible place.

2. Collection of Information Under Proposed Paragraph (a)(3)(i)(D)

a. Collection of Information

Proposed paragraph (a)(3)(i)(D) would require ''collections of information,'' as that term is defined in 44 U.S.C. 3502(3), by foreign broker-dealers. Proposed paragraph (a)(3)(i)(D) would require that a foreign broker-dealer relying on either Exemption (A)(*1*) or Exemption (A)(*2*) disclose to qualified investors that the foreign broker dealer is regulated by a foreign securities authority and not by the Commission. Foreign broker-dealers relying on Exemption (A)(*1*) would also have to disclose to qualified investors whether U.S. segregation requirements, U.S. bankruptcy protections and protections under the SIPA would apply to any funds and securities held by the foreign broker-dealer.

b. Proposed Use of Information

The collections of information required by proposed paragraph (a)(3)(i)(D) are designed to put U.S. investors on notice that foreign broker-dealers operating pursuant to the exemption in Rule 15a–6(a)(3)(iii)(A)(*1*) are not subject to the same regulatory requirements as U.S. registered broker-dealers. This notice is important because the proposed rule would eliminate the current chaperoning requirements, as described below, and allow a foreign broker-dealer to effect transactions on behalf of qualified investors and custody qualified investor funds and securities relating to any resulting transactions with more limited participation in the transaction by a U.S. registered broker-dealer.[180]

c. Respondents

As discussed above, the Commission estimates that approximately 400 foreign broker-dealers would rely on Exemption (A)(*1*) of the proposed rule. All 400 foreign broker-dealers would be required to comply with proposed paragraph (a)(3)(i)(D). The Commission also estimates that approximately 300 foreign broker-dealers would rely on Exemption (A)(2) of the proposed rule. These 300 foreign broker-dealers would only be required to comply with proposed paragraph (a)(3)(i)(D)(*1*).

d. Reporting and Recordkeeping Burden

Each of the 700 foreign broker-dealers that would rely on either Exemption (A)(*1*) or Exemption (A)(*2*) of the proposed rule would have to make certain disclosures required by proposed paragraph (a)(3)(i)(D) to each qualified investor from which the foreign broker-dealer induces or attempts to induce the purchase or sale of any security. The Commission believes that such disclosures would be conveyed in the course of other communications between the foreign broker-dealer and the qualified investor, such as the foreign broker-dealer's standard account-opening documentation. Thus, we expect that the only collection of information burden that proposed paragraph (a)(3)(i)(D) would impose on a foreign broker-dealer would be the hour burden incurred in developing and updating as necessary the standard documentation it will provide to qualified investors. In addition, the Commission does not believe that there would be a significant difference in the burden placed foreign broker-dealers relying on either Exemption (A)(*1*) or Exemption (A)(*2*) of the proposed rule by proposed paragraph (a)(3)(i)(D). The Commission

[180] Similarly, because of the limited participation of the U.S. registered broker-dealer and the lack of chaperoning requirements, the proposed rule would require that the foreign broker-dealer be regulated for conducting securities activities in a foreign country by a foreign securities authority.

estimates that each of the 700 foreign broker-dealers that would rely on either Exemption (A)(*1*) or Exemption (A)(*2*) of the proposed rule would spend approximately 2 hours per year in drafting, reviewing or updating as necessary their standard documentation for compliance with proposed paragraph (a)(3)(i)(D). Therefore, the aggregate annual collection of information burden imposed by proposed paragraph (a)(3)(i)(D) on foreign broker-dealers would be approximately 1,400 hours (700 foreign broker-dealers multiplied by 2 hours per foreign broker-dealer).

e. Collection of Information Is Mandatory

This collection of information would be mandatory for foreign broker-dealers that rely on either Exemption (A)(*1*) or Exemption (A)(*2*) of the proposed rule.

f. Confidentiality

The disclosures required by proposed paragraph (a)(3)(i)(D) would be conveyed to a qualified investor in the course of communications between the foreign broker-dealer and the qualified investor, such as the foreign broker-dealer's standard account-opening documentation, and therefore would not be confidential.

g. Record Retention Period

Proposed paragraph (a)(3)(i)(D) would not include a record retention period.

3. Related Collections of Information Under Proposed Paragraphs (a)(3)(iii)(B) and (D)

a. Collection of Information

Proposed paragraphs (a)(3)(iii)(B) and (D) would require ''collections of information,'' as that term is defined in 44 U.S.C. 3502(3), by U.S. registered broker-dealers. Proposed paragraph (a)(3)(iii)(B) would require that a U.S. registered broker-dealer obtain from a foreign broker-dealer and each of the foreign broker-dealer's foreign associated persons written consents to service of process for any civil action brought by or proceeding before the Commission or a self-regulatory organization (as defined in Section 3(a)(26) of the Exchange Act).[181] Proposed paragraph (a)(3)(iii)(D) would require that the U.S. registered broker-dealer maintain a written record of the consents to service of process obtained pursuant to proposed paragraph (a)(3)(iii)(B).

b. Proposed Use of Information

The collections of information under proposed paragraphs (a)(3)(iii)(B) and (D) are designed to assist the Commission in its regulatory function by ensuring that foreign broker-dealers and their foreign associated persons effecting transactions with qualified investors have consented to service of process.

c. Respondents

All U.S. registered broker-dealers engaged by foreign broker-dealers to assume the responsibilities of a U.S. registered broker-dealer under the proposed exemption would be subject to the collections of information. As discussed above, the Commission estimates that approximately 40 U.S. registered broker-dealers would act under Exemption (A)(*1*) for foreign broker-dealers relying on the exemption provided by paragraph (a)(3)(iii)(A)(*1*) of the proposed rule and that approximately 18 U.S. registered broker-dealers would act under Exemption (A)(*2*). Therefore, the Commission estimates that a total of approximately 58 U.S. registered broker-dealers would have to comply with the collection of information requirements in proposed paragraphs (a)(3)(iii)(B) and (D).[182]

d. Reporting and Recordkeeping Burden

As discussed above, the Commission estimates that each of the 40 U.S. registered broker-dealers that would serve under Exemption (A)(*1*) for affiliated foreign broker-dealers under the proposed rule would do so for an average of 10 foreign broker-dealers. The Commission also estimates that each such foreign broker-dealer would have an average of 5 foreign associated persons engaged in business under the proposed rule. Therefore, proposed paragraphs (a)(3)(iii)(B) and (D) would require each U.S. registered broker-dealer acting under Exemption (A)(*1*) to obtain and record a total of 50 consents to service of process from foreign associated persons and 10 consents to service of process from foreign broker-dealers.

As discussed above, the Commission estimates that each of the 18 U.S. registered broker-dealers that would serve under Exemption (A)(*2*) for qualified investors would do so for approximately 16.67 foreign broker-dealers. Also as discussed above, the Commission estimates that each such foreign broker-dealer would have an average of 5 foreign associated persons engaged in business under the proposed rule. Therefore, proposed paragraphs (a)(3)(iii)(B) and (D) would require a U.S. registered broker-dealer acting under Exemption (A)(*2*) to obtain a total of 83.35 consents to service of process from foreign associated persons and 16.67 consents to service of process from foreign broker-dealers.[183]

The Commission further estimates that each affected U.S. registered broker-dealer, acting under either exemption, would spend an average of 0.5 hours in obtaining and recording one consent under proposed paragraphs (a)(3)(iii)(B) and (D). Each U.S. registered broker-dealer acting under Exemption (A)(*1*) would therefore spend an average of 35 hours per year in its efforts at compliance with proposed paragraphs (a)(3)(iii)(B) and (D) (0.5 hours per consent per representation multiplied by the sum of 50 consents from foreign associated persons plus 10 consents to service of process from foreign broker-dealers plus 10 representations). Similarly, each U.S. registered broker-dealer acting under Exemption (A)(*2*) would spend an average of 50.01 hours per year in its efforts at compliance with proposed paragraphs (a)(3)(iii)(B) and (D) (0.5 hours per consent per representation multiplied by the sum of 83.35 consents from foreign associated persons plus 16.67 consents to service of process from foreign broker-dealers). Therefore, the Commission estimates an annual aggregate reporting and recordkeeping burden of 2,300.18 hours for compliance with proposed paragraphs (a)(3)(iii)(B) and (D) (35 hours per 40 registered broker-dealers acting under Exemption (A)(*1*) for a total of 1,400 hours, plus 50.01 hours per 18 registered broker-dealers acting under Exemption (A)(*2*) for a total of 900.18 hours).

e. Collection of Information Is Mandatory

This collection of information would be mandatory for U.S. registered broker-dealers that intermediate transactions for foreign broker-dealers that choose to

[181] The consent would indicate that process may be served on the foreign broker-dealer or foreign associated person by service on the U.S. registered broker-dealer in the manner set forth on the U.S. registered broker-dealer's current Form BD. *See* proposed Rule 15a–6(a)(3)(iii)(B).

[182] The Commission understands that U.S. registered broker-dealers acting under Exemption (A)(*2*) are likely to also act under Exemption (A)(*1*) under the proposed rule. The Commission requests comment regarding how frequently this would occur.

[183] Assuming a relatively even distribution of the estimated 300 foreign broker-dealers across the 18 U.S. registered broker-dealers acting under Exemption (A)(*2*), proposed paragraphs (a)(3)(iii)(B) and (D) would require some U.S. registered broker-dealers acting under Exemption (A)(*2*) to obtain and record 83 consents to service of process from foreign associated persons and some to obtain and record 84 consents to service of process from foreign associated persons.

rely on the exemption in paragraph (a)(3) of the proposed rule.

f. Confidentiality

The proposed rule would require that U.S. registered broker-dealers maintain a written record of the information and consents and make such records available to the Commission upon request. All information related to transactions with qualified investors, whether kept by U.S. registered broker-dealers or foreign broker-dealers, would be subject to review and inspection by the Commission and its representatives as required in connection with examinations, investigations and enforcement proceedings. Such information is not required to be disclosed to the public and will be kept confidential by the Commission.

g. Record Retention Period

Proposed paragraphs (a)(3)(iii)(B) and (D) would not include separate record retention periods. However, the U.S. registered broker-dealers would have to retain the consents for the period specified under 17 CFR 240.17a–4(b)(7), which requires broker-dealers to preserve all written agreements they enter into relating to their business for a period of not less than three years, the first two years in an easily accessible place.

4. Related Collections of Information Under Proposed Paragraph (a)(4)(vi)(B)

Under the proposed rule, a foreign broker-dealer would be exempt from the registration, reporting and other requirements of the Exchange Act to the extent that it effects transactions in securities with or for, or induces or attempts to induce the purchase or sale of any security by any U.S. person, other than a registered broker-dealer or bank acting pursuant to an exception or exemption from the definition of ''broker'' or ''dealer'' in Section 3(a)(4)(B), 3(a)(4)(E), or 3(a)(5)(C) of the Exchange Act or the rules thereunder, that acts in a fiduciary capacity for an account of a foreign resident client.[184] As a condition of this exemption, the foreign broker-dealer would be required, among other things, to obtain and maintain a representation from the U.S. person that the account is managed in a fiduciary capacity for a foreign resident client.[185]

a. Collection of Information

Proposed paragraph (a)(4)(vi)(B) would require ''collections of information'' as that term is defined in 44 U.S.C. 3502(3) in that it would require foreign broker-dealers to obtain and maintain a representation for each account managed by a U.S. fiduciary that the account is managed in a fiduciary capacity for a foreign resident client. This would require foreign broker-dealers to obtain and record each representation. The proposed paragraph would also require a collection of information by the U.S. fiduciary, which would be required to provide the representation to the foreign broker-dealer.

b. Proposed Use of Information

The collection of information in proposed paragraph (a)(4)(vi)(B) would assist foreign broker-dealers seeking to rely on the exemption under proposed paragraph (a)(4)(vi) in complying with the terms of that exemption and would provide the Commission with access to such information.

c. Respondents

As discussed above, the Commission estimates that approximately 700 foreign broker-dealers that would take advantage of either exemption under proposed paragraphs (a)(3)(iii)(A)(*1*) and (*2*).[186] The Commission believes that these estimated 700 foreign broker-dealers represent the number of foreign broker-dealers that engage in international broker-dealer business and would take advantage of the exemption in proposed paragraph (a)(4)(vi). Even though not all of these 700 foreign broker-dealers may actually utilize the exemption in proposed paragraph (a)(4)(vi), for the purposes of determining the number of foreign broker-dealer respondents for the collection of information in proposed paragraph (a)(4)(vi)(B), the Commission estimates that all 700 foreign broker-dealers that engage in international business and that would otherwise take advantage of either exemption under proposed paragraph (a)(3)(iii)(A)(*1*) or (*2*) would also utilize the exemption in proposed paragraph (a)(4)(vi) and be respondents for the purposes of the collection of information in proposed paragraph (a)(4)(vi)(B).

The Commission estimates that there are 349 U.S. fiduciaries that would be respondents for the purposes of the collection of information in proposed paragraph (a)(4)(vi)(B).

d. Reporting and Recordkeeping Burden

The Commission estimates that each U.S. fiduciary would spend approximately 5 hours per year providing representations in accordance with proposed paragraph (a)(4)(vi)(B). Therefore, the Commission estimates that the aggregate burden imposed by proposed paragraph (a)(4)(vi)(B) on all of the approximately 349 U.S. fiduciaries would be approximately 1,745 hours per year (5 hours multiplied by 349 U.S. fiduciaries).

The Commission also estimates that each foreign broker-dealer would spend approximately 5 hours per year obtaining and recording the representations required by proposed paragraph (a)(4)(vi)(B) from U.S. fiduciaries. Therefore, the Commission estimates that the aggregate burden imposed by proposed paragraph (a)(4)(vi)(B) on all the approximately 700 foreign broker-dealers would be approximately 3,500 hours per year (5 hours multiplied by 700 foreign broker-dealers).

e. Collection of Information Is Mandatory

These collections of information would be mandatory for U.S. fiduciaries and foreign broker-dealers that effect transactions according to the proposed exemption in proposed paragraph (a)(4)(vi) of the proposed rule.

f. Confidentiality

The proposed rule would require that a foreign broker-dealer maintain the representations it would obtain from a U.S. fiduciary regarding the U.S. fiduciary's accounts. All information related to transactions with qualified investors, whether kept by U.S. registered broker-dealers or foreign broker-dealers, would be subject to review and inspection by the Commission and its representatives as required in connection with examinations, investigations and enforcement proceedings. Such information is not required to be disclosed to the public and will be kept confidential by the Commission.

g. Record Retention Period

Proposed paragraph (a)(4)(vi)(B) would not include a record retention period.

5. Request for Comment

The Commission requests comment on the proposed collections of information in order to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information would have practical utility; (2) evaluate the accuracy of the Commission's estimates of the burden of the proposed collections of information; (3) determine whether there are ways to

[184] *See* proposed paragraph (a)(4)(vi).

[185] *See* proposed paragraph (a)(4)(vi)(B).

[186] *See* note 178, *supra*.

enhance the quality, utility and clarity of the information to be collected; (4) evaluate whether there are ways to minimize the burden of the collection of information on those who respond, including through the use of automated collection techniques or other forms of information technology; and (5) evaluate whether the proposed rules would have any effects on any other collection of information not previously identified in this section.

Persons who desire to submit comments on the collection of information requirements should direct their comments to OMB, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should also send a copy of their comments to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090, and refer to File No. S7–16–08. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication of this document in the **Federal Register**; therefore, comments to OMB are best assured of having full effect if OMB receives them within 30 days of this publication. Requests for the materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–16–08, and be submitted to the Securities and Exchange Commission, Records Management Office, 100 F Street, NE, Washington, DC 20549–1110.

B. Consideration of Benefits and Costs

1. Expected Benefits

The proposed rule would have several important benefits. First, the proposed rule would allow a broader category of U.S. investors [187] greater access to foreign broker-dealers and foreign markets by expanding and streamlining the conditions under which a foreign broker-dealer could operate without triggering the registration requirements of Section 15(a)(1) or 15B(a)(1) of the Exchange Act. Among the benefits to U.S. investors would be expanded investment and diversification opportunities and lower cost of accessing such opportunities. Because the proposed rule would broaden the category of U.S. investors that may interact with foreign broker-dealers, the expanded investment and diversification opportunities would be available to a greater number of U.S. investors that the Commission believes possess the investment experience to effect transactions with or through unregistered broker-dealers under the safeguards imposed by the proposed rule. This also would be a benefit to foreign broker-dealers, which would have access to an expanded potential client base without being required to register with the Commission as broker-dealers.

In addition, the Commission understands that the current chaperoning requirements have been criticized as impractical and imposing unnecessary operational and compliance burdens, particularly for communications with broker-dealers in time zones outside those of the United States. In this regard, the Commission believes that the investor protections intended to be provided by the presence of associated persons of U.S. registered broker-dealers during in-person or telephonic communications between foreign associated persons of foreign broker-dealers and U.S. investors, as under the current rule, could be achieved by less operationally challenging methods. Specifically, foreign associated persons that are subject to statutory disqualification specified in Section 3(a)(39) of the Exchange Act would be precluded from contacting qualified investors and foreign broker dealers would be required to make disclosures to those investors, placing them on notice that the foreign broker-dealer is regulated by a foreign securities authority and not by the Commission and, in the case of Exemption (A)(*1*), informing them that U.S. segregation requirements, U.S. bankruptcy protections and protections under the SIPA would apply to any funds and securities held by the foreign broker-dealer.[188] Accordingly, the proposed rule would allow a foreign broker-dealer to have unchaperoned visits within the United States and communications, both oral and electronic, with qualified investors, as long as a U.S. registered broker-dealer assumes certain limited responsibilities in connection with the foreign broker-dealer's activities, as described above. As a result, the proposed rule should facilitate communications between foreign broker-dealers and qualified investors to communicate, while utilizing more efficient methods designed to protect qualified investors.

Second, the proposed rule would provide U.S. registered broker-dealers and foreign broker-dealers with greater flexibility in how they conduct business under paragraph (a)(3) of Rule 15a–6. For instance, U.S. registered broker-dealers acting under Exemption (A)(*1*) would be allowed to maintain copies of books and records in the form prescribed by the foreign securities authority and with the foreign broker-dealer. In general, the proposed rule would allow a foreign broker-dealer to effect transactions on behalf of qualified investors and custody qualified investor funds and securities relating to any resulting transactions with more limited participation in the transaction by a U.S. registered broker-dealer. Among other things, this would have the benefit of eliminating the need for the U.S. registered broker-dealer to ''double book'' transactions under current Rule 15a–6(a)(3). It would also allow the foreign broker-dealer more flexibility in how it communicates with qualified investors, as described above.

Third, while proposed Rule 15a–6 would impose certain costs on U.S. registered broker-dealers acting under either exemption, as discussed below, these costs would be markedly less than under current Rule 15a–6. Most importantly, the proposed rule would significantly reduce the cost for a U.S. registered broker-dealer to intermediate transactions under paragraph (a)(3) of Rule 15a–6.

Under Exemption (A)(*1*), the U.S. registered broker-dealer would not be required to effect transactions—and perform all of the functions associated with effecting transactions, including, for example, compliance with recording and recordkeeping rules, issuing confirmations and maintaining custody of customer funds and securities—on behalf of the qualified investor. Instead, under the proposed rule, the U.S. registered broker-dealer would only be required to collect and make available to the Commission certain limited information. Specifically, the proposed rule would require a U.S. registered broker-dealer acting under Exemption (A)(*1*) to maintain certain books and records, including confirmations and statements issued by the foreign broker-dealer to the qualified investor, but would permit the U.S. registered broker-dealer to maintain those books and records in the form, manner and for the

[187] As noted above, the proposed rule would expand the category of U.S. investors with which a foreign broker-dealer may interact under Rule 15a–6(a)(2) from major U.S. institutional investors to qualified investors and generally expand the category of U.S. investors with which a foreign broker-dealer may interact under Rule 15a–6(a)(3) from major U.S. institutional investors and U.S. institutional investors to qualified investors. This would allow foreign broker-dealers, for the first time, to interact with a corporation, company, or partnership that owns and invests on a discretionary basis $25 million or more in investments under paragraph (a)(3). In addition, under the proposed rule, natural persons who own or invest on a discretionary basis not less than $25,000,000 in investments would be included. *See* Part III.A., *supra*.

[188] *See* proposed Rule 15a–6(a)(3)(i)(B) and (D).

periods prescribed by the foreign securities authority regulating the foreign broker-dealer and with the foreign broker-dealer.[189] The Commission believes that all U.S. registered broker-dealers acting under Exemption (A)(*1*) in Rule 15a–6(a)(3) relationships would take advantage of this option, thereby significantly lowering costs associated with collecting and maintaining books and records, including collection of information burdens under the Paperwork Reduction Act and associated costs. There would also be significant cost savings for U.S. registered broker-dealers acting under Exemption (A)(*1*) because they would not have to clear and settle transactions, safeguard customer funds and securities, or issue confirmations.

In addition, regardless of whether the U.S. registered broker-dealer acts under Exemption (A)(*1*) or Exemption (A)(*2*), the proposed rule would eliminate the current rule's requirement that the U.S. registered broker-dealer make certain determinations regarding the foreign broker-dealer and its associated persons. Under the proposed rule, the U.S. registered broker-dealer would only be required to obtain representations from the foreign broker-dealer regarding that information.[190] This would be a significant cost savings with respect to the current rule because the U.S. registered broker-dealer would not have to make the determination itself for each foreign broker-dealer and its associated persons as under the current rule.

Finally, the proposed rule would reduce a foreign broker-dealer's costs of meeting the conditions of the exemption in two principal ways. First, the proposed amendments would make it less burdensome for foreign broker-dealers to communicate directly with qualified investors. Currently, Rule 15a–6 requires an associated person of a U.S. registered broker-dealer to chaperone certain in-person visits and oral communications between foreign associated persons and U.S. institutional investors, with certain exceptions, and chaperone in-person visits between foreign associated persons and major U.S. institutional investors under certain conditions.[191] The proposed rule would allow a foreign broker-dealer to hold in-person meetings and have oral and electronic communications with qualified investors without the intermediation of an U.S. registered broker-dealer. This would result in significant cost savings.

Second, the proposed rule would provide a foreign broker-dealer with the alternative of having a U.S. registered broker-dealer act under Exemption (A)(*1*) or under Exemption (A)(*2*). These alternatives would allow the foreign broker-dealer and the U.S. registered broker-dealer, as well as the qualified investors, to determine the most cost effective method for complying with the rule.

2. Expected Costs

Of course, reducing the cost of complying with paragraph (a)(3) of Rule 15a–6 may encourage more U.S. registered broker-dealers and foreign broker-dealers to rely on the rule, which would increase the overall costs associated with complying with the requirements of Rule 15a–6. As noted above, the increased flexibility of the proposed rule would provide U.S. investors with increased access to foreign broker-dealers and foreign markets, which would presumably lead to increased transactional activity under Rule 15a–6(a)(3). As a result, foreign broker-dealers may experience some incremental cost increase. In addition, because some of the responsibilities under paragraph (a)(3) of the proposed rule would be shifted to the foreign broker-dealer, foreign broker-dealers may incur some greater costs, some of which are described below. We believe these increased costs would be insignificant. For example, because foreign broker-dealers, as members of foreign exchanges, typically are required to clear and settle transactions in foreign securities, regardless of the requirements of Rule 15a–6(a)(3), shifting the responsibility for clearing and settling from the U.S. registered broker-dealer to foreign broker-dealers would not increase their cost of complying with Rule 15a–6. Similarly, other foreign governments or securities regulators may have laws or rules comparable to the provisions in Section 3(a)(39) of the Exchange Act related to statutory disqualification. Requiring foreign broker-dealers to review the fitness of their associated persons under the provisions of Section 3(a)(39), in addition to meeting the requirements of equivalent foreign laws or rules, would impose an incremental cost on those foreign broker-dealers.

Shifting some of the responsibilities under paragraph (a)(3) of the proposed rule to foreign broker-dealers would have an effect on the business activities of U.S. registered broker-dealers. For example, shifting the responsibility for clearing and settling from the U.S. registered broker-dealer to foreign broker-dealers would reduce the compensation received by U.S. registered broker-dealers for these and other services. The elimination of the chaperoning requirements of the current rule may also reduce income to U.S. registered broker-dealers that perform such services for foreign broker-dealers.

In addition, as described above, certain provisions of the proposed rule would impose ''collection of information'' requirements within the meaning of the Paperwork Reduction Act on foreign broker-dealers, U.S. registered broker-dealers and U.S. fiduciaries.[192] For each of the collections of information that would be imposed by the proposed rule, the relevant respondent or respondents would incur an hour burden in complying with the collection of information requirements. For example, as described above, proposed paragraph (a)(3)(i)(B) would require that a foreign broker-dealer make a determination that its foreign associated persons effecting transactions with a qualified investor are not subject to a statutory disqualification. As explained, we estimate each foreign broker-dealer that takes advantage of the exemption under the proposed rule would spend approximately 10 hours per year in making the determination required by proposed paragraph (a)(3)(i)(B). While not a burden for the purposes of the PRA, the foreign broker-dealer would also incur certain costs related to the 10 hours per year spent making the determination required by proposed paragraph (a)(3)(i)(B). Specifically, the determination likely would be made by an employee of the foreign broker-dealer to whom the broker-dealer must pay a salary or hourly wage. Therefore, the salaries and wages foreign broker-dealers, U.S. registered broker-dealers and U.S. fiduciaries must pay to the employees who would perform the work required by the collections of information imposed by the proposed rule would be additional costs of meeting the exemption in the proposed rule. These costs are described in the following paragraphs.

a. Collection of Information Costs to Foreign Broker-Dealers

As described above in the Paperwork Reduction Act Analysis, proposed paragraphs (a)(3)(i)(B), (a)(3)(i)(C), (a)(3)(i)(D), (a)(3)(iii)(C) and (a)(4)(vi)(B) each would impose collection of

[189] *See* proposed Rule 15a–6(a)(3)(iii)(A)(*1*) and (*2*).

[190] *See* proposed Rule 15a–6(a)(3)(iii)(C).

[191] *See* 17 CFR 240.15a–6(a)(3)(ii)(A)(*1*) and (iii)(B). This would be a cost savings for U.S. registered broker-dealers as well, as they would no longer need to chaperone the in-person visits and oral communications of foreign associated persons with U.S. investors.

[192] *See* Part VI.A., *supra*.

information requirements on foreign broker-dealers. Other than proposed paragraph (a)(3)(i)(C), these collections of information would require the foreign broker-dealer to make certain legal determinations, provide or obtain legal representations or draft disclosures. Therefore, the Commission believes that the type of work required by each requirement would be performed by a compliance attorney at each foreign broker-dealer. Proposed paragraph (a)(3)(i)(C), however, is a record-keeping requirement and the Commission believes that this type of work would be performed by a compliance clerk at each foreign broker-dealer.

The Commission estimates that foreign broker-dealers pay compliance attorneys at an hourly rate of (U.S.) $270.00 and compliance clerks at an hourly rate of (U.S.) $62.00.[193] Based on the estimates of the hourly burden imposed by proposed paragraphs (a)(3)(i)(B), (a)(3)(i)(B), (a)(3)(i)(D), (a)(3)(iii)(C) and (a)(4)(vi)(B) on foreign broker-dealers, the Commission further estimates that foreign broker-dealers would incur a total cost of (U.S.) $6,560.00 per year complying with the collection of information requirements that would be imposed by those paragraphs.[194]

b. Collection of Information Costs to U.S. Registered Broker-Dealers

As described above in the Paperwork Reduction Act Analysis, proposed paragraphs (a)(3)(iii)(B), (C) and (D) each would impose collection of information requirements on U.S. registered broker-dealers. These collections of information would require the U.S. registered broker-dealer to obtain and record certain legal representations made by foreign broker-dealers. The Commission believes that this type of work would be performed by a compliance attorney at each U.S. registered broker-dealer. The Commission estimates that U.S. registered broker-dealers pay compliance attorneys at an hourly rate of (U.S.) $270.00. Based on the estimates of the hourly burden imposed by proposed paragraphs (a)(3)(iii)(B), (C) and (D) on U.S. registered broker-dealers, the Commission further estimates that U.S. registered broker-dealers intermediating transactions for foreign broker-dealers relying on Exemption (A)(*1*) would incur a total cost of (U.S.) $10,800.00 per year complying with the collection of information requirements that would be imposed by those paragraphs.[195] The Commission estimates that U.S. registered broker-dealers intermediating transactions for foreign broker-dealers relying on Exemption (A)(*2*) would incur a total cost of (U.S.) $13,527.00 per year complying with the collection of information requirements that would be imposed by those paragraphs.[196]

c. Collection of Information Costs to U.S. Fiduciaries

As described above in the Paperwork Reduction Act Analysis, proposed paragraph (a)(4)(vi)(B) would impose collection of information requirements on U.S. fiduciaries in the form of a legal representation provided to foreign broker-dealers that, for each account managed by a U.S. fiduciary, the account is managed in a fiduciary capacity for a foreign resident client. The Commission believes that these legal representations would be made by a compliance attorney at each U.S. fiduciary.

The Commission estimates that U.S. fiduciaries pay compliance attorneys at an hourly rate of (U.S.) $270.00. Based on the estimates of the hourly burden imposed by proposed paragraphs (a)(4)(vi)(B) on U.S. fiduciaries, the Commission further estimates that U.S. fiduciaries would incur a total cost of (U.S.) $1,350.00 per year complying with the collection of information requirements that would be imposed by that paragraph (5 hours per year at $270.00 per hour = $1,350.00 per year).[197]

3. Comment Solicited

We solicit comment on the costs and benefits to U.S. investors, foreign broker-dealers, U.S. registered broker-dealers and others who may be affected by the proposed amendments to Rule 15a–6. We request views on the costs and benefits described above as well as on any other costs and benefits that could result from adoption of the proposed rule amendments. The Commission renews its request for comment on the Commission's estimates of the hour burdens that would be imposed by the collections of information in the proposed rule and also solicits comment on its calculation of the monetary cost of those burdens. In particular, the Commission requests comment on whether the work required by the collections of information would be performed by the individuals identified. For the cost of work that would be performed by employees of foreign broker-dealers, is it reasonable to assume that such employees generally earn salaries and wages similar to comparable employees of U.S. registered broker-dealers, after conversion to U.S. dollars? Commenters are requested to provide empirical data and other factual support for their views, if possible.

C. Consideration of Burden on Competition, and on Promotion of Efficiency, Competition and Capital Formation

Section 3(f) of the Exchange Act requires the Commission, whenever it engages in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action would promote efficiency, competition and capital formation.[198] Exchange Act Section 23(a)(2) requires the Commission, in making rules under the Exchange Act, to consider the impact that any such rule would have on competition. This section also prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.[199]

The Commission believes the proposed amendments would not impose any burden on competition not necessary or appropriate in furtherance of the Exchange Act. By streamlining the conditions under which a foreign broker-dealer may operate without

[193] *See* Securities Industry and Financial Markets Association's ''Management & Professional Earnings in the Securities Industry—2007'' (available at: *http://www.sifma.org/research/surveys/professional-earning.shtml*). The SIFMA study reflects a survey of U.S. earnings. We estimate that the earnings of comparable employees at foreign broker-dealers are similar, but solicit comment on whether foreign salaries vary and, if so, how.

[194] 10 hours per year at $270.00 per hour complying with proposed paragraph (a)(3)(i)(B), 10 hours per year at $62.00 per hour complying with proposed paragraph (a)(3)(i)(C), 2 hours per year at $270.00 per hour complying with proposed paragraph (a)(3)(i)(D), 5 hours per year at $270.00 per hour complying with proposed paragraph (a)(3)(iii)(C) and 5 hours per year at $270.00 per hour complying with proposed paragraph (a)(4)(vi)(B). *See* Part VI.A., *supra*.

[195] 5 hours per year at $270.00 per hour and 35 hours per year at $270.00 per hour. *See id.*

[196] 8 hours per year at $270.00 per hour and 50.1 hours per year at $270.00 per hour. *See id.* As discussed above in the PRA analysis, U.S. registered broker-dealers intermediating transactions for foreign broker-dealers relying on Exemption (A)(*1*) would spend different amounts of time complying with the collection of information requirements of proposed paragraphs (a)(3)(iii)(B), (C) and (D) than U.S. registered broker-dealers intermediating transactions for foreign broker-dealers relying on Exemption (A)(*2*). *See* Part VI.A., *supra*. Therefore, the monetary costs incurred in complying with these paragraphs would also be different for intermediating U.S. registered broker-dealers, depending on the exemption relied upon by the foreign broker-dealer. *See id.*

[197] *See id.*

[198] 15 U.S.C. 78c(f).

[199] 15 U.S.C. 78w(a)(2).

triggering the registration requirements of Section 15(a)(1) or 15B(a)(1) of the Exchange Act and the reporting and other requirements of the Exchange Act (other than Sections 15(b)(4) and 15(b)(6)), the proposed amendments to Rule 15a–6 should promote competition by enhancing the ability of foreign broker-dealers to compete with U.S. registered broker-dealers in the U.S. market, particularly with respect to transactions in foreign securities.[200]

We note, in particular, that making Exemption (A)(1) available only to a foreign broker-dealer conducting a predominantly foreign business would provide U.S. investors increased access to foreign expertise and foreign securities and markets without creating opportunities for regulatory arbitrage vis-à-vis U.S. securities markets.[201] As discussed above, this is particularly important because, under Exemption (A)(1), for the first time, a foreign broker-dealer would be able to provide full-service brokerage services (including maintaining custody of funds and securities from resulting transactions) to U.S. investors.[202] We are proposing an 85 percent threshold for determining whether a foreign broker-dealer conducts a predominantly foreign business because a lower threshold may allow a foreign broker-dealer to conduct significant business in U.S. securities with U.S. investors without being regulated by the Commission. While we believe that the 85% threshold would be effective in eliminating the opportunities for regulatory arbitrage, allowing foreign broker-dealers to conduct any business in U.S. securities could affect the competitive positions of U.S. registered broker-dealers and foreign broker-dealers.[203]

Exemption (A)(*2*), which would not require a foreign broker-dealer to conduct a predominantly foreign business, would allow foreign broker-dealers to compete more directly with U.S. registered broker-dealers without limitation on the type of security, U.S. or foreign. In order to preserve measures of investor protection, however, the proposed rule would require a U.S. registered broker-dealer to keep books and records and act as custodian of funds and securities.[204]

We solicit comment on whether the proposed amendments would promote competition, including whether investors would be more or less likely to choose to invest in foreign markets under the proposed rule.

The Commission also believes the proposed amendments would promote efficiency. As U.S. investors increasingly invest in securities whose primary market is outside the United States, the ability of these investors to obtain ready access to foreign markets has grown in importance.[205] In some cases, foreign broker-dealers may offer such access to these U.S. investors by more efficient means than a U.S. registered broker-dealer could. For example, a foreign broker-dealer may more efficiently provide a U.S. investor with the means to execute trades quickly in a wide range of foreign securities markets. A foreign broker-dealer may also offer expertise and access to research reports concerning foreign companies, industries and market environments.[206] Allowing foreign broker-dealers to provide these services to certain classes of U.S. investors without registering, but subject to the conditions of proposed Rule 15a–6, would further stimulate the competition and efficiencies promoted by the current rule.

The proposed amendments to Rule 15a–6 are intended to promote efficiency by reducing the costs of compliance for both U.S. registered broker-dealers and foreign broker-dealers conducting transactions pursuant to paragraph (a)(3). As discussed above, the proposed rule should decrease the burden on U.S. registered broker-dealers acting under both Exemption (A)(*1*) and Exemption (A)(*2*) for foreign broker-dealers. While some of this burden would be shifted to foreign broker-dealers, overall the burden of complying with the proposed rule would be lessened. As a result, we believe that the proposed rule would enable U.S. investors to more efficiently gain access to foreign broker-dealers.

Although the proposed amendments may facilitate capital formation and capital raising by foreign broker-dealers by increasing the available pool of U.S. investors foreign broker-dealers can contact directly, the Commission does not believe that they would have any significant effect on capital formation. We note that U.S. investors can currently obtain access to foreign securities through U.S. broker-dealers.

We solicit comment on whether the proposed amendments would impose a burden on competition or whether they would promote efficiency, competition and capital formation. Commenters are requested to provide empirical data and other factual support for their views if possible.

D. Consideration of the Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, or ''SBREFA,''[207] the Commission must advise the Office of Management and Budget as to whether the proposed amendments to Rule 15a–6 constitute a ''major'' rule. Under SBREFA, a rule is considered ''major'' where, if adopted, it would result or is likely to result in: An annual effect on the economy of $100 million or more (either in the form of an increase or a decrease); a major increase in costs or prices for consumers or individual industries; or a significant adverse effect on competition, investment, or innovation.

If a rule is ''major,'' its effectiveness would generally be delayed for 60 days pending Congressional review. We request comment on the potential impact of the proposed amendments on the economy on an annual basis. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

E. Regulatory Flexibility Certification

Section 3(a) of the Regulatory Flexibility Act (''RFA'') requires the Commission to undertake an initial regulatory flexibility analysis of the impact of a proposed rule on small entities, unless the Commission certifies that the rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The application of the RFA to proposed Rule 15a–6 is limited, because its exemptive provisions would be restricted to foreign broker-dealers, which need not be considered under the RFA. In addition, to the extent that the proposed rule, if adopted, would impose any costs on U.S. registered broker-dealer affiliates of such foreign broker-dealers or on other domestic broker-dealers, those costs are not significant and would not impact a substantial number of small domestic broker-dealers. Staff discussions with industry have indicated that small domestic broker-dealers generally are not engaged in Rule 15a–6(a)(3) arrangements with foreign broker-dealers, and have not indicated that this would change in the event the conditions of the rule were amended. Accordingly, the Commission certifies that the proposed rule, if adopted, would not have a significant economic

[200] *See* generally, Part III.D.1., *supra*.

[201] *See* Part III.D.1.a., *supra*.

[202] *See id*.

[203] *See* Part III.D.1.a.ii., *supra*.

[204] *See* Part III.D.1.b.i., *supra*.

[205] *See* Part III.A., *supra*.

[206] *See generally,* Part III.D.1., *supra*.

[207] Pub. L. 104–121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. 601).

impact on a substantial number of small entities.

VII. Statutory Basis

Pursuant to the Exchange Act and particularly sections 3, 10, 15, 17, 23, 30 and 36 thereof, 15 U.S.C. 78c, 78j, 78o, 78q, 78w, 78dd and 78mm, the Commission proposes to amend § 240.15a–6 of Title 17 of the Code of Federal Regulations in the manner set forth below.

VIII. Text of Proposed Amendments

Lists of Subjects in 17 CFR Part 240

Broker-dealers, Reporting and recordkeeping requirements, Securities.

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11 and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

2. Revise § 240.15a–6 to read as follows:

§ 240.15a–6 Exemption of certain foreign brokers or dealers.

(a) A foreign broker or dealer shall be exempt from the registration requirements of sections 15(a)(1) and 15B(a)(1) of the Act and the reporting and other requirements of the Act (other than sections 15(b)(4) and 15(b)(6)), and the rules and regulations thereunder, that apply specifically to a broker or dealer that is not registered with the Commission solely by virtue of its status as a broker or dealer, with respect to a particular transaction or solicitation, to the extent that the foreign broker or dealer operates in compliance with paragraph (a)(1), (a)(2), (a)(3), (a)(4) or (a)(5) of this section with respect to such transaction or solicitation.

(1) *Unsolicited trades*. The foreign broker or dealer effects transactions in securities with or for persons that have not been solicited by the foreign broker or dealer.

(2) *Research reports*. The foreign broker or dealer furnishes research reports to qualified investors, and effects transactions in the securities discussed in the research reports with or for those qualified investors, provided that the following conditions are satisfied:

(i) The research reports do not recommend the use of the foreign broker or dealer to effect trades in any security;

(ii) The foreign broker or dealer does not initiate contact with those qualified investors to follow up on the research reports, and does not otherwise induce or attempt to induce the purchase or sale of any security by those qualified investors;

(iii) If the foreign broker or dealer has a relationship with a registered broker or dealer that satisfies the requirements of paragraph (a)(3) of this section, any transactions with the foreign broker or dealer in securities discussed in the research reports are effected pursuant to the provisions of paragraph (a)(3) of this section; and

(iv) The foreign broker or dealer does not provide research to U.S. persons pursuant to any express or implied understanding that those U.S. persons will direct commission income to the foreign broker or dealer.

(3) *Solicited trades*. The foreign broker or dealer induces or attempts to induce the purchase or sale of any security by a qualified investor, provided that the following conditions are satisfied:

(i) The foreign broker or dealer:

(A) Provides the Commission (upon request or pursuant to agreements reached between any foreign securities authority and the Commission or the U.S. government) with any information or documents within the possession, custody, or control of the foreign broker or dealer, any testimony of foreign associated persons, and any assistance in taking the evidence of other persons, wherever located, that the Commission requests and that relates to transactions under paragraph (a)(3) of this section, except that if, after the foreign broker or dealer has exercised its best efforts to provide the information, documents, testimony, or assistance, including requesting the appropriate governmental body and, if legally necessary, its customers (with respect to customer information) to permit the foreign broker or dealer to provide the information, documents, testimony, or assistance to the Commission, the foreign broker or dealer is prohibited from providing this information, documents, testimony, or assistance by applicable foreign law or regulations, then this paragraph (a)(3)(i)(A) shall not apply and the foreign broker or dealer will be subject to paragraph (c) of this section;

(B) Determines that the foreign associated person of the foreign broker or dealer effecting transactions with the qualified investor is not subject to a statutory disqualification specified in section 3(a)(39) of the Act;

(C) Has in its files, and will make available upon request by a registered broker or dealer satisfying the requirements described in paragraph (a)(3)(iii) of this section or the Commission, the types of information specified in § 240.17a–3(a)(12), provided that the information required by paragraph (a)(12)(i)(D) of § 240.17a–3 shall include sanctions imposed by foreign securities authorities, foreign exchanges, or foreign associations, including without limitation those described in section 3(a)(39) of the Act; and

(D) Discloses to the qualified investor:

(*1*) That the foreign broker or dealer is regulated by a foreign securities authority and not by the Commission; and

(*2*) Solely when the foreign broker or dealer is relying on paragraph (a)(3)(iii)(A)(*1*) of this section, that U.S. segregation requirements, U.S. bankruptcy protections and protections under the Securities Investor Protection Act will not apply to any funds or securities held by the foreign broker or dealer;

(ii) The foreign associated person of the foreign broker or dealer effecting transactions with the qualified investor conducts all securities activities from outside the United States, except that the foreign associated person may conduct visits to qualified investors within the United States, provided that transactions in any securities discussed during visits by the foreign associated person with qualified investors are effected pursuant to paragraph (a)(3) of this section; and

(iii) A registered broker or dealer:

(A) Is responsible for either:

(*1*) Maintaining copies of all books and records, including confirmations and statements issued by the foreign broker or dealer to the qualified investor, relating to any resulting transactions, except that such books and records may be maintained:

(*i*) In the form, manner and for the periods prescribed by the foreign securities authority regulating the foreign broker or dealer; and

(*ii*) With the foreign broker or dealer, provided that the registered broker or dealer makes a reasonable determination that copies of any or all of such books and records can be furnished promptly to the Commission, and promptly provides to the Commission any such books and records, upon request; or

(*2*) (*i*) Maintaining books and records, including copies of all confirmations issued by the foreign broker or dealer to the qualified investor, relating to any resulting transactions; and

(*ii*) Receiving, delivering and safeguarding funds and securities in connection with the transactions on behalf of the qualified investor in compliance with § 240.15c3–3;

(B) Obtains from the foreign broker or dealer and each foreign associated person written consent to service of process for any civil action brought by or proceeding before the Commission or a self-regulatory organization (as defined in section 3(a)(26) of the Act), providing that process may be served on them by service on the registered broker or dealer in the manner set forth on the registered broker's or dealer's current Form BD (17 CFR 249.501);

(C) Obtains from the foreign broker or dealer a representation that the foreign broker or dealer has complied with the requirements of paragraphs (a)(3)(i)(B) and (C) of this section; and

(D) Maintains records of the written consents required by paragraph (a)(3)(iii)(B) and the representations required by paragraph (a)(3)(iii)(C) of this section, and makes these records available to the Commission upon request.

(4) *Counterparties and specific customers.* The foreign broker or dealer effects transactions in securities with or for, or induces or attempts to induce the purchase or sale of any security by:

(i) A registered broker or dealer, whether the registered broker or dealer is acting as principal for its own account or as agent for others, or a bank acting pursuant to an exception or exemption from the definition of ''broker'' or ''dealer'' in section 3(a)(4)(B), 3(a)(4)(E), or 3(a)(5)(C) of the Act or the rules thereunder;

(ii) The African Development Bank, the Asian Development Bank, the Inter-American Development Bank, the International Bank for Reconstruction and Development, the International Monetary Fund, the United Nations and their agencies, affiliates and pension funds;

(iii) A foreign person temporarily present in the United States, with whom the foreign broker or dealer had a bona fide, pre-existing relationship before the foreign person entered the United States;

(iv) Any agency or branch of a U.S. person permanently located outside the United States, provided that the transactions occur outside the United States;

(v) U.S. citizens resident outside the United States, provided that the transactions occur outside the United States, and that the foreign broker or dealer does not direct its selling efforts toward identifiable groups of U.S. citizens resident abroad; or

(vi) Any U.S. person, other than a registered broker or dealer or a bank acting pursuant to an exception or exemption from the definition of ''broker'' or ''dealer'' in section 3(a)(4)(B), 3(a)(4)(E), or 3(a)(5)(C) of the Act or the rules thereunder, that acts in a fiduciary capacity for an account of a foreign resident client, provided the foreign broker or dealer:

(A) Only effects transactions in securities with or for, or induces or attempts to induce the purchase or sale of securities by, the U.S. person in the U.S. person's capacity as a fiduciary to an account of a foreign resident client; and

(B) Obtains and maintains a representation from the U.S. person that the account is managed in a fiduciary capacity for a foreign resident client.

(5) *Familiarization with foreign options exchanges.* The foreign broker or dealer effects transactions in options on foreign securities listed on a foreign options exchange of which it is a member for a qualified investor that has not been solicited by the foreign broker or dealer, except that:

(i) A representative of the foreign options exchange located in a foreign office or a representative office in the United States may:

(A) Communicate with persons that the representative of the foreign options exchange reasonably believes are qualified investors, including through participation in programs and seminars in the United States, regarding the foreign options exchange, the options on foreign securities traded on the foreign options exchange and, if applicable, the foreign options exchange's OTC options processing service;

(B) Provide persons that the representative of the foreign options exchange reasonably believes are qualified investors with a disclosure document that provides an overview of the foreign options exchange and the options on foreign securities traded on that exchange, including the differences from standardized options in the U.S. options market and special factors relevant to transactions by U.S. persons in options on the foreign options exchange; and

(C) Make available to persons that the representative of the foreign options exchange reasonably believes are qualified investors, solely upon request of the investor, a list of participants on the foreign options exchange permitted to take orders from the public and any registered broker or dealer affiliates of such participants;

(ii) The foreign broker or dealer may:

(A) Make available to qualified investors the foreign options exchange's OTC options processing service; and

(B) Provide qualified investors, in response to an unsolicited inquiry concerning options on foreign securities traded on the foreign options exchange, with a disclosure document that provides an overview of the foreign options exchange and the options on foreign securities traded on that exchange, including the differences from standardized options in the U.S. domestic options market and special factors relevant to transactions by U.S. persons in options on that exchange; and

(iii) The foreign exchange may make available to qualified investors through the foreign broker or dealer the foreign options exchange's OTC options processing service.

(b) *Definitions.* When used in this section:

(1) The term *foreign associated person* shall mean any natural person domiciled outside the United States who is an associated person, as defined in section 3(a)(18) of the Act, of the foreign broker or dealer and who participates in the solicitation of a qualified investor under paragraph (a)(3) of this section.

(2) The term *foreign broker or dealer* shall mean any non-U.S. resident person (including any U.S. person engaged in business as a broker or dealer entirely outside the United States, except as otherwise permitted by this section) that is not an office or branch of, or a natural person associated with, a registered broker or dealer, whose securities activities, if conducted in the United States, would be those of a ''broker'' or ''dealer,'' as defined in section 3(a)(4) or 3(a)(5) of the Act, and that:

(i) Solely for purposes of paragraph (a)(3) of this section, is regulated for conducting securities activities, including the specific activities in which the foreign broker or dealer engages with the qualified investor, in a foreign country by a foreign securities authority; and

(ii) Solely for purposes of paragraphs (a)(3)(iii)(A)(*1*) and (a)(4)(vi) of this section, conducts a foreign business.

(3) The term *foreign business* shall mean the business of a foreign broker or dealer with qualified investors and foreign resident clients where at least 85% of the aggregate value of the securities purchased or sold in transactions conducted pursuant to both paragraphs (a)(3) and (a)(4)(vi) of this section by the foreign broker or dealer

calculated on a rolling two-year basis is derived from transactions in foreign securities, except that the foreign broker or dealer may rely on the calculation made for the prior year for the first 60 days of a new year.

(4) The term *foreign resident client* shall mean:

(i) Any entity not organized or incorporated under the laws of the United States and not engaged in a trade or business in the United States for federal income tax purposes;

(ii) Any natural person not a U.S. resident for federal income tax purposes; and

(iii) Any entity not organized or incorporated under the laws of the United States 85 percent or more of whose outstanding voting securities are beneficially owned by persons in paragraphs (b)(4)(i) and (b)(4)(ii) of this section.

(5) The term *foreign security* shall mean:

(i) An equity security (as defined in 17 CFR 230.405) of a foreign private issuer (as defined in 17 CFR 230.405);

(ii) A debt security (as defined in 17 CFR 230.902) of a foreign private issuer (as defined in 17 CFR 230.405);

(iii) A debt security (as defined in 17 CFR 230.902) issued by an issuer organized or incorporated in the United States in connection with a distribution conducted solely outside the United States pursuant to Regulation S (17 CFR 230.903);

(iv) A security that is a note, bond, debenture or evidence of indebtedness issued or guaranteed by a foreign government (as defined in 17 CFR 230.405) that is eligible to be registered with the Commission under Schedule B of the Securities Act of 1933; and

(v) A derivative instrument on a security described in paragraph (b)(5)(i), (b)(5)(ii), (b)(5)(iii), or (b)(5)(iv) of this section.

(6) The term *OTC options processing service* shall mean a mechanism for submitting an options contract on a foreign security that has been negotiated and completed in an over-the-counter transaction to a foreign options exchange so that the foreign options exchange may replace that contract with an equivalent standardized options contract that is listed on the foreign options exchange and that has the same terms and conditions as the over-the-counter options.

(7) The term *registered broker or dealer* shall mean a person that is registered with the Commission under section 15(b), 15B(a)(2), or 15C(a)(2) of the Act.

(8) The term *United States* shall mean the United States of America, including the States and any territories and other areas subject to its jurisdiction.

(c) *Withdrawal of exemption.* The Commission, by order after notice and opportunity for hearing, may withdraw the exemption provided in paragraph (a)(3) of this section with respect to the subsequent activities of a foreign broker or dealer or class of foreign brokers or dealers conducted from a foreign country, if the Commission finds that the laws or regulations of that foreign country have prohibited the foreign broker or dealer, or one of a class of foreign brokers or dealers, from providing, in response to a request from the Commission, information or documents within its possession, custody, or control, testimony of foreign associated persons, or assistance in taking the evidence of other persons, wherever located, related to activities exempted by paragraph (a)(3) of this section.

Dated: June 27, 2008.

By the Commission.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–15000 Filed 7–7–08; 8:45 am]

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VA Veteran-Owned Small Business Verification Guidelines; comments due by 7-18-08; published 5-19-08 [FR E8-10489]

LIST OF PUBLIC LAWS

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CORRECTION

In the **List of Public Laws** printed in the *Federal Register* on July 1, 2008, H.R. 2642, Public Law 110–252, was printed incorrectly. It should read as follows:

H.R. 2642/P.L. 110–252

Supplemental Appropriations Act, 2008 (June 30, 2008; 122 Stat. 2323)

Last List July 2, 2008

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